UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/37/Add.4
12 October 1999

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1997

Addendum

EL SALVADOR

[5 July 1999]

CONTENTS

		Paragraphs	Page
Introduction		1 - 8	3
I.	GENERAL LEGAL FRAMEWORK FOR THE PROHIBITION AND ELIMINATION OF TORTURE	9 - 53	4
II.	ANALYSIS OF ARTICLES	54 - 290	10
	Article 2	54 - 110	10
	Article 3	111 - 135	21
	Article 4	136 - 150	25

GE.99-44614 (E)

CONTENTS (continued)

	Paragraphs	Page
Article 5	151 - 157	28
Article 6	158 - 165	29
Article 7	166 - 167	34
Article 8	168 - 173	34
Article 9	174 - 179	39
Article 10	180 - 205	41
Article 11	206 - 237	47
Article 12	238 - 246	55
Article 13	247 - 262	56
Article 14	263 - 271	60
Article 15	272 - 280	62
Article 16	281 - 290	63

Introduction

1. This document contains the first report of El Salvador in fulfilment of its obligations under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention" or "the Convention against Torture").

2. The report has been prepared by an inter-agency team coordinated by the Ministry of Foreign Affairs and consisting of representatives of the following agencies: the National Public Security Academy, the Supreme Court of Justice, the Prisons Department, the Migration Department, the Judicial Service Training College, the Office of the Attorney-General of the Republic, the Office of the Inspector-General of the National Civil Police, the Salvadoran Institute for the Protection of Minors, the Ministry of Defence, the Ministry of Justice, the Office of the Procurator for the Protection of Human Rights, the Office of the Prosecutor-General of the Republic and the Technical Cooperation Project on Human Rights in El Salvador of the United Nations High Commissioner for Human Rights.

3. El Salvador became a party to the Convention against Torture by virtue of Executive Agreement No. 688 of 19 October 1993. With the subsequent ratification of the Convention by virtue of Legislative Decree No. 833 dated 23 March 1994, published in Official Gazette No. 92 of 19 May 1994, the domestic and international obligations provided for in this important human rights treaty entered fully into force in the country.

4. As the international community is well aware, El Salvador is in the middle of a process of profound institutional and legal change as a result of the signing of the Peace Agreements, which allowed the armed conflict to be ended by means of negotiation and the conditions for strengthening democracy to be established. These changes have helped to bring about a favourable situation in which it is possible to envisage the total elimination of the practice of torture and cruel, inhuman or degrading treatment or punishment in El Salvador.

5. From the legal point of view, there have been considerable changes in the protection of human rights under the Constitution and subsidiary law, as a result of the adoption of reforms of the guarantees of due process and the protection of the rights of detainees. Two examples of how the Salvadoran legal system is integrating universal human rights values are the broadening of the scope of habeas corpus, entailing a review of conditions of detention, and the adoption of the new Penal Code, Code of Criminal Procedure and prison system with built-in safeguards.

6. The institutional framework of the Salvadoran State was also affected in many ways by the Peace Agreements. One of the areas to have undergone the most changes is that of public security. The biggest change in this area has clearly been the disappearance of the former security bodies and their replacement by the National Civil Police (PNC), which has a specific constitutional mandate to protect human rights and whose members are trained in the National Public Security Academy, which places special emphasis on human rights education. In addition to this new framework, there was a change in the constitutional mandate of the Armed Forces, whose duties were basically restricted to the defence of national sovereignty. It is also worth drawing attention to the creation of new mechanisms to monitor police conduct, such as the Office of the Inspector-General of the PNC and the internal police disciplinary units.

7. One of the most important institutional achievements of the Peace Agreements was the establishment of the Office of the Procurator for the Protection of Human Rights (PDDH). As a result of constitutional reform, the protection of fundamental rights and freedoms was significantly strengthened by the integration into the domestic system of an agency with extremely wide-ranging powers to monitor the performance of the entire State apparatus in respect of individuals. The National Civil Police, the prison system and the judiciary are monitored by PDDH, with particular attention being paid to the rights of individuals deprived of their freedom.

8. As shown by this document, a firm basis is thus being laid in El Salvador for a new era of the protection of fundamental rights and freedoms in accordance with the legitimate wishes of the international community. The Government and Salvadoran society are taking the necessary steps to rebuild a country where peace, democracy and full respect for human rights can flourish.

I. GENERAL LEGAL FRAMEWORK FOR THE PROHIBITION AND ELIMINATION OF TORTURE

9. In accordance with the Constitution, El Salvador is a sovereign State in which sovereignty is vested in the people, who exercise it in the form and within the limits laid down in the Constitution.

10. The Government is republican, democratic and representative. The political system is pluralist and is reflected in political parties, which are the sole instrument for the representation of the people in the Government.

11. Public authority emanates from the people, the basic branches of the Government being the Legislature, the Executive and the Judiciary. The duties of these branches may not be delegated, but they cooperate with one another in performing public functions. Public officials are therefore the delegates of the people and have no powers greater than those expressly conferred on them by law (arts. 83, 85 and 86 of the Constitution).

Legislature

12. The Legislature is a collegiate body consisting of 84 deputies elected by the people by direct, secret and equal ballot. The deputies represent the people and are not bound by mandatory terms of reference. They are elected for a term of three years and can be re-elected. Their job is to legislate, i.e. to decree, reform, interpret and repeal the laws of the country.

13. For the purposes of a decision, the vote of at least one half of the elected deputies plus one, i.e. 43 deputies, is required. However, a number of decisions require a two-thirds majority, such as the election of the Attorney-General of the Republic, the Prosecutor-General of the Republic and the Procurator for the Protection of Human Rights.

14. While in office, deputies may not occupy any paid public post throughout the period for which they have been elected, except for academic or cultural posts or those connected with professional social welfare services.

Executive

15. The executive consists of the President and Vice-President of the Republic, the ministers and deputy ministers of State and their subordinate officials. This branch of the Government acts in conformity with the Constitution and its own regulations.

16. The conduct of business is the responsibility of the Secretariats of State, which are assigned to the various sectors of the administration. Each Secretariat is headed by a minister, who acts in cooperation with one or more deputy ministers. During the current presidential term of office, the ministries are as follows: Ministry of the Presidency, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Finance, Ministry of Economic Affairs, Ministry of Defence, Ministry of Public Security, Ministry of Labour and Social Insurance, Ministry of Agriculture, Ministry of Health and Social Welfare, Ministry of Works and Ministry of the Environment and Natural Resources.

17. In accordance with article 159 of the Constitution, defence and public security are to be assigned to different ministries; public security will be the responsibility of the National Civil Police, which is to be a professional, independent branch of the Armed Forces and free of all partisan activity. The National Civil Police will be responsible for urban and rural policing to maintain order and guarantee public security and peace, as well as to take part in criminal investigations on the basis of strict respect for the law and for human rights.

18. Meanwhile, articles 211 and 212 of the Constitution provide that the Armed Forces, a permanent institution serving the nation, are obedient, professional, non-political and non-deliberative and that their task is to defend the sovereignty of the State and territorial integrity. In exceptional circumstances, the President of the Republic may use the Armed Forces to keep the peace within the country.

19. It should be noted that article 216 of the Constitution establishes military courts to try purely military crimes and offences, i.e. those relating exclusively to legal matters of a strictly military nature.

Judiciary

20. The judiciary is the branch in which the Constitution has vested the exclusive power to adjudicate and to execute judicial decisions in constitutional, civil, criminal, commercial, labour, agrarian and administrative matters; it is governed by an Organization Act that determines how it operates; it is composed of the Supreme Court of Justice, the courts of second instance and the other courts that lay down the law.

21. The Supreme Court of Justice consists of 15 judges, one of whom is the President. The latter is also the President of the judiciary and of the Constitutional Division and is appointed by the Legislative Assembly. The Court has four divisions, called the Constitutional, Civil, Criminal and Administrative Disputes Divisions.

22. The courts of second instance, which are courts of appeal, consist of two judges; the courts of first instance and the courts of the justices of the peace are single-judge courts. All these judges are appointed by the Supreme Court of Justice from a shortlist of three candidates put forward by the National Council of the Judiciary.

23. All members of the judiciary are independent and subject exclusively to the Constitution and the law; in connection with the power to administer justice, they are nevertheless authorized by the Constitution, in the cases in which they are called upon to adjudicate, to declare inapplicable any law or measure taken by another branch of the Government that is in breach of constitutional provisions.

24. The Judiciary Organization Act of 12 June 1984 lays down the organization of the courts and determines the functions of the President of the Supreme Court of Justice and its divisions, of the courts of second instance and of the lower courts, as well as the duties of the other judicial officials who do not exercise jurisdiction, such as chiefs of section, registrars, chief clerks, legal assistants and so on. The Act also defines the actual area covered by each court and its jurisdiction.

National Council of the Judiciary

25. One of the new institutions created as a result of the signing of the Peace Agreements in 1992 was the National Council of the Judiciary, which is an independent institution of the Supreme Court of Justice responsible for proposing candidates for posts as judges of the Supreme Court, the courts of appeal and the courts of first instance and as justices of the peace.

26. The National Council of the Judiciary is also responsible for organizing and operating the Judicial Service Training College, the purpose of which is to improve the professional training of judges and other judicial officials. It provides theoretical and practical training for the judiciary, for judicial staff and for the Department of Public Prosecutions and carries out other investigative tasks in order to identify shortcomings and irregularities in the system for the administration of justice, together with their causes and possible solutions. It develops refresher and in-service training courses for members of the judiciary.

Department of Public Prosecutions

27. The Department of Public Prosecutions is a State body composed of the offices of the Attorney-General of the Republic, the Prosecutor-General of the Republic and the Procurator for the Protection of Human Rights, as well as of other institutions determined by law.

28. The duties of the Attorney-General of the Republic include defending the interests of the State and society, conducting criminal investigations in cooperation with the National Civil Police and bringing legal actions, either on his own initiative or on application by a party, in defence of the rule of law.[1]

29. The duties of the Prosecutor-General of the Republic include defending the family and individuals and the interests of minors and others deemed legally incompetent, providing legal assistance to individuals with scant economic resources and providing them with legal representation to defend their freedom and labour rights.[2]

30. The duties of the Procurator for the Protection of Human Rights include ensuring the observance of human rights, investigating, either on his own initiative or on the basis of complaints received, cases of human rights violations, instituting judicial or administrative proceedings for the protection of human rights, monitoring the situation of persons deprived of their freedom and supervising the conduct of the public administration towards individuals.[3]

31. According to article 144 of the Constitution of the Republic: "The international treaties concluded by El Salvador with other States or international organizations, shall constitute the laws of the Republic once they have entered into force, in conformity with the provisions of the treaties in question and of this Constitution. The law may not change or derogate from that which has been agreed in a treaty in force for El Salvador. In the event of a conflict between the treaty and the law, the treaty shall take precedence." This provision of the Constitution contains a rule for resolving conflicts of laws: first, subsidiary law may not change or derogate from that with has been agreed in a treaty and, secondly, in the event of a conflict between a treaty and a law, the treaty takes precedence.

32. With regard to the United Nations, El Salvador is a party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, among others.

33. In the American regional context, El Salvador is a party to the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

34. With regard to mechanisms for the international protection of human rights, El Salvador has ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which establishes a procedure under which communications from individuals can be brought before the Human Rights Committee.

35. In the inter-American context, El Salvador has expressly recognized the competence of the Inter-American Court of Human Rights to consider complaints by individuals of violations of the rights contained in the American Convention on Human Rights.

36. These international mechanisms are applicable once all domestic legal remedies have been exhausted, thus providing an additional remedy for anyone in the country whose rights have been violated.

37. The information on articles 2 and 4 submitted in this report gives further details of the domestic legislation El Salvador has adopted to give effect to the Convention against Torture.

38. The Convention against Torture became part of domestic law in El Salvador on 17 June 1996, when it was ratified by the Legislative Assembly, in accordance with article 144 of the Constitution of the Republic. The Convention, like any other international treaty ratified by El Salvador, is now law in the Republic, and this means that State officials must apply its provisions directly without any need for a legislative or administrative act.

39. Below we list some of the agencies which are involved in one way or another in the implementation of the Convention, although we will deal with them all in greater detail in the part of this report concerning article 2:

(a) The Office of the Prosecutor-General of the Republic, which, in accordance with its constitutional powers, provides free legal assistance through the management unit of the Office of the Public Defender to anyone accused of a crime who requests its services;

(b) The Office of the Attorney-General of the Republic, which is responsible for initiating and exercising the public right of action;

(c) The Ministry of Justice, which is responsible for the introduction, enforcement and drafting of laws;

(d) The judiciary, which is responsible for ensuring the administration of justice, as well as the enforcement of sentences;

(e) The National Civil Police, which is responsible for the investigation, under the operational control of the Attorney-General of the Republic, of all kinds of punishable acts, as provided for in article 193, paragraphs 3 and 4, of the Constitution;

(f) The Office of the Inspector-General of the National Civil Police, another supervisory body, whose mandate is to supervise and monitor the operational performance and conduct of the police in respect of human rights;

(g) The Office of the Procurator for the Protection of Human Rights (PDDH), which is a quasi-jurisdictional agency that determines whether employees of the State have acted illegally. It does this by means of decisions that are of a non-binding nature. In cases which have been duly investigated from the start of the court proceedings, as stipulated in domestic legislation, PDDH is supported by the Office of the Attorney-General of the Republic. Since it was created in 1992, PDDH has been the critical conscience of the State. Its constitutional mandate is to ensure that the National Civil Police acts within the law and guarantees the human rights of citizens. PDDH also has the authority to hear complaints from citizens concerning various acts or conduct that violate their human rights. Similarly, PDDH backs up and supports the National Civil Police by, among other things, making sure that the police act in a lawful way and by investigating violations reported by citizens.

40. Any person may bring habeas corpus proceedings for violations of the right of detained persons to liberty and physical, mental and moral integrity; amparo proceedings for violations of any of the rights recognized in the Constitution; and proceedings based on the unconstitutionality of laws, international treaties, decrees and regulations that are contrary to constitutional provisions.

41. The Constitution contains many references to the victim and the victim's right to redress and compensation. Compensation for moral damage is thus provided for by law.[4] Delaying the course of justice is also a ground for compensation.[5]

42. Likewise, article 245 of the Constitution stipulates: "Public officials shall be responsible personally, and the State subsidiarily, for the rights guaranteed in this Constitution." Similar provisions are found in various international human rights instruments, including article 9, paragraph 5, of the International Covenant on Civil and Political Rights and article 10 of the American Convention on Human Rights.

43. Although these provisions can be invoked, they contain no specific reference to the victim of an act of torture, and so we have to turn to Salvadoran criminal law. Article 16 of the Penal Code stipulates that: "Any person who is criminally responsible for a crime or offence is also liable for it under civil law if the act gives rise to loss or injury of a moral or a material nature." The loss or injury resulting from the crime is the basis for civil liability, so that the content of the "compensatory action" consists mainly of what is stipulated in article 115, which reads: "The civil consequences of the crime, which shall be stated when the sentence is handed down, include: the restitution of the property obtained as a result of the commission of the punishable act or, failing that, payment of its value; compensation or, failing that, payment of its value; reparation for the loss or injury caused; legal costs."

44. The property in question should be returned whenever possible, with a payment for wear and tear or damage, as decided by the judge in the case. This holds even when the property is in the possession of a third party who has acquired it legally, without prejudice to that party's own right to take action against the person concerned and, if that is done, the right to be compensated under civil law by the person who committed the crime or offence.

45. Compensation for loss or injury is made following an evaluation by the judge or court of the amount of damage caused, bearing in mind the value of the property and how much it is worth to the injured person. The compensation covers not only the loss or injury suffered by that person, but also by his relatives or a third party. The amount will be determined on the basis of the extent of the damage and the needs of the victim, depending on his age, circumstances and ability to work, as well as the gain resulting from the commission of the crime.

46. It should be noted that the above-mentioned article does not refer, as a civil consequence of the crime, to the rehabilitation of the victim as part of fair and adequate compensation.

47. Another aspect to consider is the legal means to be used to make the civil action truly effective.

48. The system mostly followed in Salvadoran criminal cases is that of the inseparability or compulsory linkage of the criminal and civil proceedings, although with a positivist element that justifies encroaching on the interests and wishes of the injured party by requiring that the two types of action should be brought jointly, as a single action by the body making the application on behalf of the State.[6] As a general rule, it is understood that the official body responsible for bringing a civil action in El Salvador is the Department of Public Prosecutions, through the Attorney-General of the Republic, who must bring such action in all cases of crimes where there is a public right of action.

49. Broadly speaking, there are some programmes for the protection of the victims of family violence or sexual abuse and of ill-treated or abused minors, but these are separate programmes applicable to specific groups in very particular cases and there is no national policy for dealing with the victims of crime. In that respect, we can say that our legislation has not yet evolved far enough to cover the rehabilitation of the victims of crime in general and the victims of torture or other cruel, inhuman or degrading treatment or punishment in particular.

50. As the Committee is aware, El Salvador was unfortunately in the grips of a civil war for 12 years, during which the violation of the principles embodied in the Convention against Torture were part of the culture of violence and lack of tolerance towards political opponents.

51. Today, it may be said that the number of complaints is lower than it has been during the past decade, although some isolated cases remain. PDDH reports show that acts of torture usually involve auxiliary law enforcement agencies, namely, the National Civil Police and local police forces, as well as detention and rehabilitation centres.

52. In the cases reported by PDDH, those responsible have been tried in accordance with the legislation in force. Moreover, the authorities responsible for public security have cooperated with local governments and the Ministry of Justice in investigating the acts in accordance with the outcome of the investigations carried out by the PDDH itself.

53. With regard to factors that may affect the implementation of the Convention, we note that human rights monitoring bodies, such as PDDH, the Office of the Inspector-General of the National Civil Police and the National Public Security Academy, have to be strengthened and given greater support so that, through the careful allocation and use of funds, the obstacles to the full implementation of the Convention may be overcome.

II. ANALYSIS OF ARTICLES

Article 2

Definition of torture within the framework of the Constitution

54. Under Salvadoran law, torture is prohibited by the Constitution. Although the Constitution does not contain a specific definition of torture or other cruel, inhuman or degrading treatment or punishment, an analysis of its provisions shows that it does cover such acts as defined in the Convention itself and prohibits and penalizes them.

55. Articles 2, 12 and 27 of the Constitution confirm the right to physical and moral integrity; provide that an individual may testify in legal proceedings only of his own free will; prohibit imprisonment for debt, life imprisonment and any form of ill-treatment; condemn the use of any type of torture and any violation of the physical or moral integrity of the individual; and not only prescribe punishment for the perpetrators of such acts, but make it clear that any evidence so obtained has no value whatever. The Constitution stipulates that agents of the State are prohibited from committing such acts, as are private individuals.

56. On 10 June 1996, the Constitution was amended to broaden the scope of the constitutional procedure of habeas corpus.[7] Article 11, paragraph 2, incorporates this amendment and states: "An individual shall have the right to habeas corpus when any person or authority unlawfully or arbitrarily restricts his freedom. Habeas corpus shall also be available when any authority violates the dignity or the physical, mental or moral integrity of persons in detention". The last part of this article provides for protective habeas corpus for the prevention of torture or improper treatment of detainees. It may also be used to prevent arbitrary transfers of detainees.

57. Articles 40 and 57 of the Constitutional Procedures Act also refer in a way to this type of habeas corpus.

58. Under Salvadoran law, habeas corpus has been regarded as the individual's primary safeguard;[8] it has a long constitutional tradition which has, unfortunately, largely been only historical and theoretical. There have nevertheless been instances of sentences in national case law which are worth mentioning because they prove that protective habeas corpus is applicable in El Salvador (see annex 1).

International instruments

59. El Salvador is considering the possibility of making the treaties it has ratified part of the legislation in force. Effect is thus given to the binding provisions of these instruments and individuals have an opportunity to claim the rights they guarantee in ordinary judicial proceedings.

60. The Constitution does not rank legal provisions (treaties and laws), but offers possibilities for settling conflicts between them. According to article 144 of the Constitution, a subsidiary law cannot amend or derogate from the provisions of a treaty and, in the event of a conflict between the treaty and the law, the treaty takes precedence.

61. A set of rights and guarantees of the integrity of the individual are contained in various international instruments, which form part of internal law and are binding. They include:

The Universal Declaration of Human Rights;

The Inter-American Convention to Prevent and Punish Torture;

The International Covenant on Civil and Political Rights;

The International Covenant on Economic, Social and Cultural Rights;

The International Convention on the Elimination of All Forms of Racial Discrimination;

The Convention on the Rights of the Child;

The American Convention on Human Rights;

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women;

The Code of Conduct for Law Enforcement Officials;

The American Declaration of the Rights and Duties of Man.

San José Agreement on Human Rights

62. It is very important to mention that the San José Agreement on Human Rights was signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional on 26 July 1990. It is the first substantive human rights agreement in the context of the peace process in El Salvador; the parties committed themselves to ensuring compliance with and guarantees of human rights, with particular reference to preventing acts and practices harmful to the life, integrity, security and freedom of individuals and to eliminating all practices involving disappearances, kidnappings, torture and other cruel, inhuman or degrading treatment or punishment.

1973 Penal Code

63. Criminal legislation in the State of El Salvador has undergone very considerable changes to bring it into line with the international treaties and conventions signed and ratified by the State of El Salvador. Until April 1998, El Salvador applied the Penal Code, which was adopted in March 1973 and which provided for crimes and offences making no specific reference to torture or other cruel, inhuman or degrading treatment or punishment. This meant that there were gaps in the law in relation to full protection against torture. No penalty was enforced for violating a provision of the Constitution and no aggravating circumstance was applicable in the case of injuries or other torture-related offences committed by or at the request of public officials.

64. Despite this limitation, the Code, which still applies to offences committed prior to the entry into force of the new Code, classifies as offences cases in which physical or moral damage is caused by any person (including public officials) and in which the offender must be punished. All such acts come within the definition of torture, in that they may have been committed by a public official and caused the victim moral or physical harm. The disadvantage remains, however, that the definition as a whole does not individually identify the offence, so that some of the aggravating circumstances which should apply are not covered.

65. Although the earlier Penal Code included a set of articles which contained some of the features of the definition of torture, such as those set out in articles 170 to 176 on crimes against

life and physical integrity, article 222 on abuses against prisoners, article 223 on offences of coercion and article 224 on simple threats, the problem was that they could not in themselves constitute torture as long as the offences which made up the crime of torture were not all liable to punishment and the definition as a whole was not covered.

1998 Penal Code

66. Torture is characterized as a crime in the current Penal Code, which has been in force since April 1998, and it is defined as follows:

> Article 297: "Any public official or employee who, in the performance of his functions, subjects another individual to physical or mental torture or who has the power to prevent it, but does not do so shall be liable to three to six years' imprisonment and shall be disqualified from exercising his functions or holding his post during that time".

The Penal Code thus gives effect to the provisions of the Convention, and in particular penalizes any public official who allows or commits acts of torture in the exercise of his functions. This is a broad definition, since it covers all types of State officials and agents, either because they commit the act themselves or because they allow someone else to do so. It may also be noted that the definition covers any type of harm to the victim, whether physical or moral.

67. The definition of the crime of torture also gives effect to articles 2 and 244 of the Constitution, since it provides for a crime for which anyone who violates an individual's fundamental right to physical and moral integrity is specifically punishable and should be liable to an even harsher penalty for violating a constitutional principle.

68. In accordance with the commitments adopted by El Salvador, some of the legislative measures to prevent cases of torture are to be found in the following articles of the Penal Code: torture, article 297; injuries, article 134; serious injuries, article 143; very serious injuries, article 144; deprivation of liberty, article 148; arbitrary acts, article 320; coercion, article 153; threats, article 154.

1973 Code of Criminal Procedure

69. Like the Penal Code, the Code of Criminal Procedure was amended. However, the 1973 legislation is still applicable to offences committed before the new Code entered into force in April 1998.

70. The rights of detainees were violated in the 1973 Code of Criminal Procedure and, in some cases, as in article 496, an extrajudicial confession was admitted as valid evidence provided that it was confirmed by two witnesses. In such cases, it was common practice for the confession to be made without the defence lawyer being present and the witnesses were the police officers themselves. With this type of confession, there were occasions when no other evidence was submitted and the police confirmed the "confession" of the accused, thus giving it probative value.

1998 Code of Criminal Procedure

71. A breakthrough in the new 1998 Code of Criminal Procedure is that it safeguards the rights of the accused and thus provides a means of eliminating impunity in proceedings, particularly in respect of evidence, whose legality it guarantees.[9] This prevents evidence from being submitted unlawfully during proceedings, contrary to constitutional principles and the international covenants and agreements in force in the country.[10]

1998 Prisons Act

72. With regard to prisons, amendments were also made to the Prisons Act, which is based on the United Nations Standard Minimum Rules for the Treatment of Prisoners, in order to put an end to violations of the human rights of prisoners.[11] Prisoners' rights are covered by article 10 of the Prisons Act and humane treatment and equality by article 5.

73. In April 1998, the new Prisons Act entered into force with innovations, such as the establishment of prisoners' rights, including being treated with dignity and respect. It also established the obligation of the Director-General of Prisons to submit a list of the persons being held in all prisons to the Office of the Procurator for the Protection of Human Rights each month or whenever requested to do so, while prison inspection judges are required to conduct periodic reviews of the enforcement of security measures and sentences.

74. There has also been a significant change in the application of disciplinary penalties to prisoners.[12] According to article 129 of the Prisons Act, visits may be suspended for up to eight days, except those by lawyers and notaries; solitary confinement is reduced to eight days instead of being indefinite; it may be imposed only at weekends for up to four weekends in a row; and deprivation or limitation of leisure activities is restricted to eight days.

75. The prohibition on receiving food from visitors and on extra unpaid labour has also been done away with. Disciplinary measures may be appealed with suspensive effect before the prison inspection judge, who is responsible for the enforcement of sentences. Consideration is being given to a review of the application of repeated penalties. All of this has helped eliminate abuses by prison supervisory staff.

National Civil Police Organization Act

76. The National Civil Police Organization Act was promulgated by Legislative Decree No. 269 of 25 June 1992 and published in Diario Oficial No. 144, volume 316, of 10 August 1992. It is based on the United Nations Code of Conduct for Law Enforcement Officials and, in accordance with article 159, paragraph 2, of the Constitution, provides that public security is the responsibility of the National Civil Police, based on the law and full respect for human rights.

77. Article 25, paragraph 4, of the National Civil Police Organization Act clearly states that no member of the National Civil Police may incite or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment or invoke the order of a superior or special circumstances, such as a state of war or a threat to national security, internal instability, etc., to

justify torture and other forms of cruel, inhuman or degrading treatment or punishment. Similarly, the National Civil Police must comply with and is bound by article 297 of the Penal Code.

Act on the Office of the Procurator for the Protection of Human Rights (PDDH)

78. In its procedure for the definition of human rights violations, PDDH refers to torture as an act which violates the right to physical integrity. Five operational definitions of such violations have been included in the characterization of acts which violate human rights under article 2 of the Act on the Office of the Procurator for the Protection of Human Rights (annex 2), in force in El Salvador in accordance with Legislative Decree No. 183 of 20 February 1992, published in the Diario Oficial, volume 314, of 6 March 1992.

79. As part of its efforts to strengthen PDDH, the United Nations, through the United Nations Development Programme (UNDP), provided funding for the implementation of the project entitled "Strengthening the observation, monitoring and investigation techniques of the Office of the Procurator for the Protection of Human Rights", one result of which is the investigation procedure establishing the characterization of individual human rights protected by PDDH. A handbook for characterizing human rights violations was prepared in order to support this procedure (see annex 3); it defines violations of each right and gives a summary of the national and international legislation in force to safeguard each of the rights described.

80. The PDDH characterization includes torture as a violation, but also adds other less serious violations which are used to assess the conduct of State officials. In its investigation procedures, PDDH has also included all the international treaties ratified by El Salvador and, accordingly, all the legislation now in force.

Juvenile Offenders Act

81. The rights of juvenile offenders are also protected by the Juvenile Offenders Act (annex 14). In accordance with article 5, juveniles covered by the Act are entitled to the rights and guarantees which are recognized in the Constitution, treaties, conventions, covenants and other international agreements signed and ratified by El Salvador and in the other laws applicable to persons over 18 years of age who are accused of a criminal offence or of participation in such an offence and which include:

The right to be treated with full respect for the dignity of the individual, including the right to protection of physical integrity;

The right to respect for their privacy; no information which may directly or indirectly enable them to be identified may thus be made public;

The right to a fair and public hearing, without delay, in a juvenile court, on the basis of responsibility for the act committed;

The right not to be unlawfully deprived of their liberty, or restricted in the exercise of their rights beyond the limits of the purpose, scope and content of each of the measures imposed on them, in accordance with the present Act;

The right to compliance with the rules of due process, especially the presumption of innocence and the right to be assisted by counsel from the start of the investigation;

To be informed of the reasons for their arrest and the authority responsible and to request the presence of their parents, guardians or persons in charge of them.

Action by agencies

Office of the Procurator for the Protection of Human Rights

82. The Office of the Procurator for the Protection of Human Rights (PDDH) is an agency which was established under the Peace Agreements signed in Chapultepec, Mexico, by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) as a means of giving effect to the firm commitment by the signatories to identify and eliminate systematic violations of human rights, such as arbitrary arrest, abductions, executions and violations of the right to liberty, integrity and security of person.[13]

83. Since 1992, PDDH has played a special role in Salvadoran life; it has taken on the role of the critical conscience of action by the State by reporting human rights violations and protecting the victims of such violations. It also reports on its own activities and results in its publications and particularly in its annual report on the situation of human rights in El Salvador. It thus deals, for example, with reported cases of cruel, inhuman or degrading treatment or punishment.

84. The new Penal Code and Code of Criminal Procedure expressly define the crime of torture and prescribe prison sentences of three to six years and disqualification from the post held. Criminal proceedings are instituted by the Office of the Attorney-General of the Republic, but PDDH is a quasi-jurisdictional body which monitors the illegal acts of State bodies through its decisions. While these decisions are not binding, PDDH supports the Office of the Attorney-General in instituting judicial proceedings in cases which have been duly investigated, in accordance with the national legislation in force.

85. According to PDDH, acts of torture usually involve auxiliary law enforcement agencies (National Police and local police forces). In all cases with which PDDH has dealt, the persons responsible for such acts were tried in accordance with the legislation in force. The public security authorities, local governments and the Ministry of Justice have cooperated in investigating the alleged acts and in bringing those responsible before the competent courts in accordance with the outcome of the investigations carried out by PDDH itself.

86. PDDH has kept a special watch on the National Civil Police in order to safeguard the rights to life and physical integrity.

87. PDDH received a total of 2,742 complaints in 1996, 1997 and 1998, broken down as follows:

Violation	1996	1997	1998*	Total
Torture	16	24	3	43
Cruel, inhuman or degrading treatment or punishment	40	77	29	146
Ill-treatment	881	951	503	2 235
Disproportionate use of force	101	71	46	218
Total	1 038	1 123	581	2 742

* Up to 25 November 1998 inclusive.

88. The following table shows the total number of decisions on responsibility (229) for violations of the right to physical integrity:

Violation	1995	1996	1997	1998*	Total
Torture		5			5
Cruel, inhuman or degrading treatment or punishment		2			2
Ill treatment		47	50	17	114
Disproportionate use of force		18	4	3	25
Inhuman treatment of detainees		6	1	1	8
Right to physical integrity	2	41	22	10	75
Total	2	119	77	31	229

* Up to 30 November 1998 inclusive.

89. This compilation of data shows that the crime of torture has a very low incidence rate, but, because of technical problems in the data registration system, there can be no absolute guarantee that the information on, for example, the right to physical integrity does not include unreported cases of torture.

90. It may be seen that, when cases of torture do occur, the agencies apply the legislation in force to bring those responsible to trial, as does the Office Procurator for the Protection of Human Rights.

Office of the Prosecutor-General of the Republic: Management Unit of the Office of the Public Defender

91. The Office of the Prosecutor-General of the Republic has adopted the approach taken in the Convention and uses it to determine that violations have taken place. It also uses the above-mentioned handbook for the characterization of human rights violations prepared by the Office of the Procurator for the Protection of Human Rights.

92. In accordance with article 194 of the Constitution, the Office of the Prosecutor-General of the Republic provides free legal assistance to any accused person who requests its services. This assistance is provided through the Management Unit of the Office of the Public Defender, which is itself divided into two main parts:

(a) The Office of the Public Defender for Adults, providing legal assistance to any person in the following circumstances:

(i) Persons in the initial or administrative stage of detention, by taking part in monitoring the initial phase of the investigation and providing technical advice and protection;

(ii) Persons who have been arrested by court order or whose freedom has been restricted by taking an alternative measure; in this case, assistance is provided through participation in the pre-trial phase of the investigation by contributing exculpatory evidence required to defend the person during the trial and monitoring the conditions in which precautionary measures are enforced;

(iii) Persons serving their sentence, by defending their rights, taking part in review hearings and filing complaints or raising interlocutory matters where a prisoner's rights have been violated;

(b) Public Defender for Juvenile Offenders: as for adults, legal assistance is provided from the time a charge has been brought until the stage of the enforcement of the measure imposed. Progress has been made in that assistance is being provided by a specialized group of defence lawyers who are familiar with all juvenile legislation. Generally speaking, the Office of the Public Defender tries to guarantee respect for the legal framework in which it operates in order fully to implement the constitutional provisions applicable to all individuals.

National Public Security Academy

93. When the National Public Security Academy was founded in 1992, its approach to human rights was that which was proposed by the Spanish Police and which was very useful in

the training of students at the basic, managerial and higher levels. The approach focuses mainly on the crime aspect, not necessarily on international human rights law.

94. Since 1996, with the participation of other organizations, including Radda Barnen, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) and the Office of the Procurator for the Protection of Human Rights, teachers of humanities subjects have begun to adopt a more appropriate approach to human rights, its doctrine and international law. This approach allows for new contributions, especially with regard to the right to physical integrity, in which the topic of torture has been included to allow discussions with police officers about their responsibility when it comes to interrogating a detainee or dealing with any person under any type of arrest. Various harmful and prohibited torture practices are also discussed, as are the symptoms that a person may have when he has been subjected to some form of torture.

95. This new approach is taught to students in the basic course described in annex 4 of the Academy's report, which provides information on lesson plans, the general aspects of the subject and a description of the course (level, length, etc.).

National Civil Police

96. As far as administrative matters are concerned, the National Civil Police (PNC) has disciplinary regulations to punish all forms of ill-treatment, including torture. In title III (Misdemeanours), chapter 1 (Serious Misdemeanours), article 7, paragraph 4, states that "Any person who abuses his powers and inflicts inhuman, degrading, discriminatory or humiliating treatment on his colleagues or subordinates or on persons in his custody shall be punished accordingly". In institutional matters, PNC has its own rules, which provide for the same penalties as the Convention against Torture.

Office of the Inspector-General of the National Civil Police

97. The Office of the Procurator for the Protection of Human Rights is the main governmental body responsible for monitoring human rights; the National Civil Police is a special case, however, and has an Inspector-General whose mandate is to supervise and monitor police operations and management and matters relating to human rights and police conduct in general.

98. The Inspector-General of the National Civil Police is directly responsible to the Minister of Public Security and his appointment is subject to approval by the Procurator for the Protection of Human Rights and the Attorney-General of the Republic; he has delegates in the country's 14 departments who represent him in his high-level inspection duties.

99. The Office of the Inspector-General carries out various activities in the exercise of its functions, including the preparation of the Inspector-General's reports for the Office of the Procurator for the Protection of Human Rights, opinion polls on police activity and annual assessments of the knowledge of members of the National Civil Police of human rights issues.[14] The reports of the Office of the Inspector-General to the Office of the Procurator are submitted twice yearly, and the assessment on police knowledge of human rights annually (annex 5).

Ministry of Justice

100. In 1997, the Ministry of Justice began modernizing the prison administration with a view to preventing violations; the authority concentrated in the hands of heads of prisons was transferred to the Office of the Director-General of Prisons, supported and advised by the Technical Department, the Safety and Custody Department and the Prison Criminology Council, with a predominantly civilian system of services. All professional, administrative and security staff have been trained to acquire the necessary skills to supervise the reintegration of prisoners into society, as provided in articles 81, 82, 83 and 84, paragraph 2, of the Prisons Act.

101. The Prisons Act established the Disciplinary Board; this means that disciplinary measures are no longer taken at the discretion of the prison governor, but are imposed by a panel of officials (Prisons Act, art. 131).

Ministry of National Defence

102. With regard to military jurisdiction, the Code of Military Justice contains all the provisions adopted to prevent military personnel, acting on superior orders, from arbitrarily abusing or going beyond their authority to harm or ill-treat a subordinate. Administratively, supervision is carried out by unit commanders, the armed forces Inspector-General and a military assessor in the event of an inquiry.

103. In order to protect prisoners of war, article 6 chapter I (General), Book One, of the Code of Military Justice defines the aggravating circumstances of criminal offences when military offences are committed against prisoners of war. In article 7, an abuse of authority by a superior officer against a subordinate is regarded as a mitigating factor of insubordination on the part of the latter.

104. Article 68, chapter III (Crimes under international law, devastation, plunder and sabotage), provides for 15 to 20 years' imprisonment for military personnel who commit acts of violence against individuals. The same sentence is imposed in time of war on military personnel who commit such acts as: forcing prisoners of war to fight against their own armed forces, beating them, insulting them or failing to provide necessary food and medicine when in a position to do so.

105. Article 70 provides for a sentence of 5 to 10 years' imprisonment for military personnel who strip a wounded person or a prisoner of war of his clothes or other personal possessions, increased to 15 years' imprisonment if, in so doing, they cause further injuries which make his condition worse.

106. An officer who fails to use every means at his disposal to prevent his subordinates from committing the acts described in this chapter will also be held responsible for such acts and may be sentenced to 5 to 10 years' imprisonment.

107. Article 74 stipulates a sentence of 5 to 10 years' imprisonment for military personnel who subject members of the armed forces to ill-treatment for reprisals against them.

108. It may thus be noted that the Code of Military Justice covers possible acts of torture which may be committed under strictly military jurisdiction and provides for harsher penalties.

109. In coordination with the legal advisory service of the Ministry of Justice, the Ministry's Directorate of Legal Affairs Department has prepared a draft reform of the Code, which incorporates the principles embodied in the Convention against Torture.

110. As to specific cases of torture, the Ministry of Defence has stated that it does not have any specifically involving acts of torture.

Article 3

111. The legislation in force on migration is to be found in articles 90 to 100 of the Constitution governing nationality, the rights of foreigners and other related subjects. In article 97, the Constitution stipulates that the cases and the way in which entry into and residence in the national territory may be denied are to be established by law; foreigners who participate directly in internal politics lose the right to reside in the country.

112. Article 99 of the Constitution states that foreigners may not resort to diplomatic channels, except in cases of denial of justice and once the legal remedies available to them have been exhausted. The fact that an enforceable decision is not in the claimant's favour is not a denial of justice. Anyone who contravenes this provision loses his right to reside in El Salvador.

113. It should also be mentioned that, in accordance with article 100 of the Constitution, foreigners are subject to a special law.

Ministry of the Interior

114. The activity of the Ministry of the Interior, especially with regard to migration, has been given constitutional status (monitoring of foreign migration). Similarly and in accordance with subsidiary legislation, article 2 of the Migration Act clearly states that the monitoring of migration is the responsibility of the Ministry of the Interior through the Office of the Director-General for Migration and is therefore in keeping with the Migration Act and the Aliens Act.

Deportation of aliens

115. When a case of possible deportation from the national territory arises, it is the responsibility of the Ministry of the Interior to decide whether the person concerned should be extradited, deported or returned in accordance with article 8 of the Aliens Act. Such a decision is taken in cases where a person has participated directly or indirectly in El Salvador's internal politics.

116. Article 57 of the Aliens Act states that: "Cases not covered by this Act shall be subject to the provisions of ordinary law." This is part of what are known as administrative proceedings and is provided for in the Political System Act, which establishes the procedural principles of impartiality and the right to a hearing, in accordance with the principles governing legal

proceedings. When a foreigner contravenes the relevant legislation, he is thus tried according to the law; if the decision goes against him, he may resort to the remedies provided for by law, such as administrative proceedings, in the court that handed down the decision. Once this remedy has been exhausted, he may apply to the Supreme Court of Justice for amparo. This remedy forms part of El Salvador's legal system and is provided for in the Constitutional Procedures Act.

117. When the Ministry of the Interior hands down a decision, the person concerned has three days as from its notification to file an application for review with the Ministry of the Interior. The Ministry then has eight days in which to set a day and a time for the person to claim his rights; whether he appears in person or not, the Ministry hands down a decision by the third day without further formalities.

118. In other cases, persons without documents seeking refugee status in the national territory have gone to the offices of the United Nations High Commissioner for Refugees (UNHCR) to apply for such status. The UNHCR office has thus become responsible for determining refugee status and cooperates with the Ministry of the Interior to obtain the legal documents proving that the persons concerned are refugees. On 30 September 1998, UNHCR closed its offices in El Salvador and the present situation is a matter of concern because there is no official procedure for dealing with such persons, apart from the 1951 Convention relating to the Status of Refugees, its Protocol and other additional instruments.

Office of the Director-General for Migration

119. The Office of the Director-General for Migration, a department of the Ministry of the Interior whose main function is to monitor migration, has drawn attention to the implications of the fact that El Salvador has been targeted by traffickers in human beings. In recent years, groups of Chinese, Senegalese, Egyptians, Ecuadorians and Central Americans have arrived in the country, all without documents and some from countries with which El Salvador has no diplomatic relations. According to the Office of the Director-General for Migration, these persons without documents are all left in the hands of the local authorities once they have been detained. It should be noted that, while such persons are in the country and the necessary investigations for their deportation are being carried out, they are given food, accommodation, basic necessities, medical care and other facilities.

120. The Office of the Director-General for Migration has referred to the difficult situation which arises when these detainees do not speak the language and are nationals of countries with which El Salvador has no diplomatic relations. Once the Office of the Director-General for Migration has obtained the deportation order from the Ministry of the Interior (this mechanism operates within 24 hours of their detention), it tries to find ways of providing them with documents. The problem is more complicated when their country has no diplomatic representation in the vicinity of El Salvador and it is difficult to communicate with them. When such persons have to stay longer than necessary, the lack of some amenities begins to affect them.

121. Meanwhile, the Office of the Director-General for Migration tries to find ways of ensuring that these persons are recognized and provided with documents by the nearest

diplomatic representation. It is much more difficult to expel them immediately after they have been detained because there is little or no communication with diplomatic headquarters.

122. In order to broaden its jurisdiction in respect of the deportation of aliens, as provided for in article 63 of the Migration Act, the Ministry of the Interior will order the deportation of any alien whose presence in the country is contrary to national interests; this will be an administrative procedure. Unlawful entry will also result in deportation, in accordance with article 60 of the Migration Act.

123. The instructions for the institution of the administrative proceedings governed by article 42 of the Political System Act relating to the administrative penalties applied by the Office of the Director-General for Migration for violations of the Migration Act indicate that, when an alien is in imminent danger, El Salvador either grants him permanent residence or Salvadoran nationality by naturalization, in accordance with the Constitution and the relevant treaties, as may be seen from two actual cases described in annex 6.

124. As far as the Convention is concerned, the Office of the Director-General for Migration meets the requirements of national legislation and the international instruments ratified by the State of El Salvador.

Extradition

125. In accordance with article 182, paragraph 3, of the Constitution, it is the responsibility of the Supreme Court of Justice to determine whether extradition is to be granted or not; it gives its opinion on the legitimacy of the application for extradition, but without saying whether or not the accused is guilty. In this case, the opinion of the judicial authority is binding on the Government.

> Article 182: The Supreme Court of Justice has the following functions:
>
> "3. To try the cases of detainees and cases not assigned to another authority; to order letters of request or letters rogatory to be issued for the taking of evidence abroad and compliance with those from other countries, notwithstanding the provisions of existing treaties; and to grant extradition."

126. Requests for extradition are generally made through diplomatic channels; in accordance with the provisions of article 193, paragraphs 2, 3 and 4, of the Constitution and the principles on which the present Code of Criminal Procedure is based, e.g. formality and informality, and without prejudice to treaties on the subject and the absence of legal regulation, it is the responsibility of the Attorney-General of the Republic to institute proceedings in the Supreme Court of Justice in respect of applications for extradition filed by requesting States and to state the grounds for any judicial decision handed down.

127. In accordance with the principles of due process, the application for extradition should contain enough information to allow for the investigation and the corresponding procedure and to supply circumstantial evidence in relation to the charges: name and exact identity of the accused; description and location of evidence of the commission of the offence and participation

in it; inclusion of the parts of the proceedings which were instituted abroad and which may be relevant; and transcription of the applicable legal provisions, together with the documents specified in the treaties.

128. It should be borne in mind that article 28 of the Constitution of the Republic of El Salvador states that:

> "El Salvador grants asylum to aliens wishing to reside in its territory except in the cases for which internal law and international law provide. Exceptions may not apply in the case of persons persecuted only on political grounds.
>
> Extradition may not be ordered in respect of nationals under any circumstances or in respect of aliens for political offences, even when they give rise to ordinary offences."

129. The Constitution thus allows the extradition of persons who are not Salvadoran nationals, provided that the act giving rise to extradition is a punishable offence and not of a political nature or an ordinary offence resulting from a political act. The provisions of the Constitution are a kind of exception to the implementation of extradition. Nevertheless and in accordance with the international tendencies followed by El Salvador, article 21 of the Penal Code sets out basic standards relating to what is "political" and excludes from that category exceptionally serious acts which are affronts to mankind, such as acts of terrorism and crimes against humanity. This provision is both useful and necessary for avoiding problems with the State requesting cooperation in respect of the ordinary or political nature of the acts giving rise to the request, since it takes account of international practice in this regard.

130. Since the Constitution provides that nationals may not be extradited, it must be considered that permanent residence in the country and being subject to El Salvador's jurisdiction is a fundamental right of all Salvadorans, especially as a result of historical circumstances, and it must be regarded as a right of which no one may be deprived on any grounds or by any means. This does not mean that Salvadorans who commit crimes abroad will go unpunished; they will be tried in El Salvador in accordance with the laws of the country.

131. With regard to the extradition of a person to another State where he is in danger of being subjected to torture, no such cases have been recorded to date. Legally, there is no procedure for guaranteeing conditions of this kind, but there is the alternative of requesting the international protection of the State.

132. As stated above, national legislation (the Migration Act and extradition treaties) makes the Ministry of the Interior, through the Office of the Director-General for Migration, responsible for migration formalities. In the cases of foreigners deported from the national territory that have been investigated to date, there has been no evidence that any of them were in danger of being subjected to torture.

<u>International legislation</u>

133. The international texts on extradition which El Salvador has signed, including the American Convention on Human Rights (Pact of San José), the Convention on Private

International Law (Bustamante Code) and the Inter-American Convention on Extradition, embody modern principles which give form to the definition and make it possible to participate in useful international assistance. This prevents extradition from becoming a mechanism which allows torture. These principles include legality, dual criminality, aut dedere aut punire, and the prohibition of the death penalty and infamous punishment.

134. In close relation to the principle of legality, article 1 of the Penal Code stipulates that:

> Article 1. "No one shall be punished for an act or omission which has not previously been accurately and unambiguously described in criminal law as a crime or offence; nor may he be subject to penalties or security measures which have not been established by law."

135. Extradition is therefore not permitted, except in the case of a crime recognized by El Salvador. Similarly, granting extradition is conditional on the accused not being tried for offences committed previously or for offences other than those on which the extradition request is based.

Article 4

136. Among measures taken under Salvadoran legislation to give effect to the Covenant in the areas concerned, article 39 of the Penal Code provides the following definitions of officials, public and municipal employees, public authorities and law enforcement officers:

> "1. Public officials: all persons providing services, whether paid or unpaid, ongoing or temporary, civilian or military, in the federal or municipal government or any autonomous government agency who are legally invested with the power to consider and decide all matters relating to the organization and delivery of public services;
>
> 2. Public authorities: State officials who, in their own right or by virtue of their position or function as members of a court, exercise ordinary jurisdiction;
>
> 3. Public and municipal employees: all agents of the State or its decentralized bodies who lack decision-making power and act on the orders or under the authorization of a supervisor; and
>
> 4. Law enforcement officers: National Civil Police officers.

137. In addition, Book Two, title XVI (Offences relating to the Public Administration), chapter I (Abuse of authority), article 320, of the Penal Code criminalizes arbitrary acts as follows "An official or public employee or person responsible for a public service who, in the performance of his functions, commits an unlawful or arbitrary act, harasses or humiliates a person or damages property or uses unlawful or unnecessary pressure in the performance of his duties or functions, or permits a third person to do so, shall be liable to two to four years' imprisonment and specific disqualification for the same period of time."

138. Title III, chapter II, deals with offences relating to personal autonomy and establishes a term of one to three years' imprisonment for coercion, i.e. an act using violence to force another person to commit, tolerate or refrain from committing an act. When the coercion is aimed at impeding the exercise of a fundamental right, the penalty is a prison term of two to four years (art. 153). If an act of torture were to be permitted under such conditions, the penalty would be increased because a fundamental right had been violated.

Crimes against humanity

139. In a single chapter contained in Book Two, title XIX, of the Penal Code, Salvadoran criminal legislation deals with crimes against humanity, which include several types of offence. The chapter has been reviewed and amendments proposed to add the offence of torture in time of armed conflict, as a crime against humanity carrying a penalty of 10 to 15 years' imprisonment.

140. Mention should also be made of article 99, final paragraph, of the Penal Code, which provides that the offence of torture is not time-barred:

> "Offences shall not be time-barred in the following cases: torture, acts of terrorism, kidnapping, genocide, violation of the laws or customs of war, enforced disappearance of persons, political, ideological, racial, sexual or religious persecution, provided that the acts in question were committed after the entry into force of this Code."

141. Article 297 of the Penal Code quoted above establishes liability for public officials or employees, law enforcement officers or public authorities who misuse their position to subject a person to physical or psychological torture, as stated in article 1 of the Convention. Torture means severe pain or suffering, whether physical or mental, inflicted on a person; penalties cover not only the act of torture itself, but also the failure to prevent the Commission of such an act. The penalty for torture is three to six years' imprisonment, with, in addition, disqualification for the position or function in question for the same period as the duration of the prison sentence. Disqualification means the inability to exercise certain rights, which, in this case, would be the position or function.

142. Pursuant to article 4 of the Convention, all acts of torture are regarded as offences and subject to penalties, as mentioned above, including attempts to commit torture and the various degrees of participation in torture, including complicity. These acts are already covered by Salvadoran legislation, but in the general provisions of the Penal Code. Article 24 of the Code establishes rules governing incompleted acts or attempts and article 32 defines perpetrators and participants, which include not only direct or co-perpetrators, but also intermediaries, instigators and accomplices.[15]

143. The complaints received by the Office of the Procurator for the Protection of Human Rights usually identify the offenders and their accomplices, who are mentioned by name in its decisions, and prosecution is recommended. The most significant investigations into offences against the physical integrity of victims of the security forces have agreed with the results of investigations conducted by PDDH and have included prosecution of those responsible to the fullest extent of the system of justice.

144. If a criminal offence is found to have been committed, the Office of the Public Defender provides legal assistance for the defence of any person charged, whether an official or not.

145. There have been no specific cases to date in which legal assistance has been provided in connection with such offences. The absence of such cases, however, does not mean that cases of torture or ill-treatment have not occurred.

146. Reports from civil society, as reflected in the reports of the Office of the Procurator for the Protection of Human Rights, citing members of the National Civil Police for ill-treatment or arbitrary acts, suggest that such cases do occur. The victims of such abuses are reluctant to file a formal complaint with the relevant agencies, as they are not able to obtain the information and cooperation necessary to open an investigation; this is an area where the Office of the Public Defender might be able to ensure greater participation.

147. Annex 7 contains a report concerning the replies requested by the Special Rapporteur, Mr. Nigel S. Rodley, in connection with alleged incidents of torture dated 10 December 1998 and 6 January 1999 and committed by members of the National Civil Police, as well as examples of sentences handed down.

Ministry of National Defence

148. With regard to exclusively military jurisdiction, as mentioned in this report, in connection with article 2, chapter III of the Code of Military Justice relates to crimes under international law, which include the offence of torture; the bill amending the Code also criminalizes torture, in accordance with the Convention, for which it establishes a penalty of 6 to 12 years' imprisonment. There have been no specific cases in which judicial proceedings have been conducted in respect of this offence.

Ministry of Justice

149. The following is the administrative procedure to be followed in connection with acts of torture:

1. Once notice is received of an act of torture, the offender should be brought before the Attorney-General of the Republic for an investigation to be conducted;

2. The employee should be suspended from duty with pay for the duration of the investigation;

3. If the Office of the Attorney-General files a complaint, a dismissal process should begin;

4. If the person is not charged and is released, the dismissal process is suspended and, if the person has already been dismissed, he must be given an opportunity to be reinstated;

5. If the person is charged, the penalty corresponding to the offence in question must be applied.

150. Minor offences by technical staff are covered by the Civil Service Act. Arrangements are being made to bring security staff within the purview of the disciplinary regulations for security and custodial staff in the prison system, which stipulate the mechanisms to be followed for minor offences or, in cases of torture, the penalty for a criminal offence, as set forth in the Salvadoran Penal Code.

Article 5

Universal jurisdiction

151. El Salvador accepts the general interest of the international community in seeking and prosecuting criminal offenders who commit acts against property protected internationally by specific agreements or rules of international law or acts seriously undermining universally recognized human rights. It therefore considers it permissible to seek this type of criminal within the national territory, thereby avoiding the difficulties which would ensue were El Salvador to become a country of asylum for criminals from other countries, and to prosecute offences against internationally recognized human rights, as occur in cases of torture when they are committed elsewhere.

152. To this end, article 10 of the Penal Code establishes the universal principle which makes it possible to apply Salvadoran criminal law to acts of international significance, regardless of the nationality of the perpetrator, the property involved or the place of commission. The article reads:

> "Article 10. Criminal legislation shall also apply to offences committed by anyone whosoever in a place not subject to Salvadoran jurisdiction, provided that they affect property internationally protected by specific agreements or rules of international law or seriously undermine universally recognized human rights."

153. Salvadoran criminal law is applied in conformity with the regulations which treaties and doctrine have established for such cases and is thus applicable to both nationals and foreigners without distinction, in conformity with principles such as territoriality, personality, nationality and universality.

154. Due process for persons accused of an offence requires appropriate extradition mechanisms. El Salvador has a duty not to extradite persons when there are substantial grounds for believing that they would be subjected to torture in the country requesting their extradition.

155. Criminal legislation in this area is contained in the new Penal Code, beginning in article 7, which largely reproduces the principles established in previous legislation. These new provisions are shown in the following table:

Penal Code	Code of Criminal Procedure
Article 7. Obvious combination of offences	Article 8. Principle of territoriality
Article 14. Retroactivity of the favourable law	Article 9. Principle of personality or nationality
Article 15. Favourable law subsequent to conviction	Article 10. Principle of universality
Article 16. Provisional laws	Article 11. Acceptance of extraterritorial jurisdiction
Article 17. Application of criminal law to individuals	Article 12. Time and place of the commission of the punishable act
	Article 13. Criminal law in force

156. El Salvador's criminal system has incorporated the basic principles for the prosecution and punishment of the offences expressly provided for in the corresponding legislation.

157. Legal theory is applied in practice in El Salvador and offences committed in the national territory are tried on a priority basis over any other type of offence, even if jurisdiction indicates otherwise.

Article 6

158. The preventive measures which El Salvador has established for the purpose of ensuring a person's presence are detention for the duration of the investigation, pre-trial detention and other less serious measures. Warrants may be issued by the judge in the case and also by the Attorney-General of the Republic.

159. As mentioned earlier, when the security forces detain a person, they must take the rights established in the Constitution into consideration. The Code of Criminal Procedure (adopted in December 1997) also establishes guidelines for ensuring the presence of persons accused of any offence, such as torture.

160. In cases involving a serious offence such as torture, the person is generally ordered held in pre-trial detention, which may be replaced by payment of bail. The investigation procedure and all phases of the proceedings, including the sentence and its enforcement, are within the jurisdiction of the Office of the Procurator for the Protection of Human Rights (PDDH), specifically as regards compliance with legal warrants by the State agents involved and respect for the human rights of the accused.

161. There have been no reports to date of procedural errors in torture proceedings; however, the Office of the Procurator for the Protection of Human Rights continues to be one of the quasi-judicial bodies to which individuals may apply in order to file a complaint against State agents who have violated their rights or failed to comply with legal warrants in a procedure affecting them directly (detention, investigations, judicial procedure, sentence and enforcement of sentence).

162. Article 13 of the Constitution of the Republic states the following:

"No government body, authority or official may issue orders of arrest or imprisonment except in conformity with the law; such orders shall always be in writing. An offender found in flagrante delicto may be apprehended by any person, who shall immediately hand him over to the competent authority.

Administrative detention may not exceed 72 hours in duration. Within that time, the detainee must be brought before the competent judge together with a record of any action taken in the case.

Detention for investigation may not exceed 72 hours and the competent court must notify the detainee in person of the reason for his detention, receive his statements and order his release or pre-trial detention before the expiry of that period.

For purposes of protection of society, any person whose antisocial, immoral or harmful activities reveal him to be in a dangerous condition and constituting an imminent risk to society or to individuals may be subjected to security measures of a re-educational or rehabilitative nature. Such measures must be strictly regulated by law and made subject to the authority of the judiciary."

163. Regarding precautionary measures to ensure that a person accused of an offence remains present for the duration of the proceedings, the new Salvadoran criminal legislation has introduced certain changes and now stipulates that pre-trial detention may be ordered only in exceptional cases rather than as a rule, as was previously the case. The following are the provisions governing detention:

(a) General principle:

"Article 285. Precautionary measures shall be ordered by a judicial decision stating the reasons therefor and shall continue for the time period strictly necessary.

A warrant imposing or extending a precautionary measure may be annulled or amended, even on an ex officio basis, at any stage of the proceedings."

(b) Detention for the duration of the inquiry:

"Article 291. When a person accused of committing an offence is brought before the judge, the judge shall order him detained for the duration of the inquiry and transferred to the appropriate prison with a written notice to the head of the prison.

On completion of the inquiry, the judge must order pre-trial detention or release for the accused, as appropriate. Failure to do so will make him liable to criminal responsibility.

The inquiry shall last no longer than 72 hours from the time the accused was brought before the judge."

(c) Pre-trial detention:

"Article 292. The following are necessary for the accused to be ordered held in pre-trial detention:

(1) It must be proved that an act characterized as an offence has been committed and that there are substantial grounds to believe that the accused is either the perpetrator or a participant; and

(2) The offence must carry a maximum prison term of more than three years or, if less, the judge must deem pre-trial detention necessary given the circumstances of the act, the alarm which the act has caused to society or the frequency with which similar acts are committed or the accused must be subject to another precautionary measure."

(d) Other cases giving rise to pre-trial detention:

"Article 293. Pre-trial detention shall also be ordered in the following cases:

(1) When the accused fails to appear, without a legitimate reason, at the first summons or each time the court deems it necessary;

(2) When it is believed that the accused might interfere with a specific step in the inquiry because there are serious grounds to believe that he might destroy, change, hide, eliminate or falsify evidence or try to influence persons charged jointly with him, injured parties, witnesses or experts to commit perjury or behave in an unethical or deceptive manner or induce any other person to behave in such a manner or commit such acts; and

(3) When the behaviour of the accused during the current or previous proceedings gives the judge substantial reason to believe that he will continue to commit punishable acts."

In the latter two cases, the first condition specified in the proceeding article must also be met.

"Article 294. Notwithstanding the contents of the two preceding articles, even if the offence carries a penalty harsher than that indicated in article 292, paragraph 1, of this Code, when the accused is not subject to other precautionary measures and there are substantial grounds for believing that he will not try to evade justice and when the offence has not caused alarm, pre-trial detention may be replaced by another precautionary measure."

(e) Alternatives to pre-trial detention:

"Article 295. When it is appropriate to replace pre-trial detention by another measure that is less harsh for the accused, the competent judge or court may, ex officio or at the request of a party, order one of the following measures in its place:

(1) House arrest in the accused's own home or the custody of another person, with no supervision or with supervision ordered by the judge;

(2) Obligation to accept the care or supervision of a particular individual or agency, which will report periodically to the judge;

(3) Obligation to appear periodically before the judge or an authority designated by the judge;

(4) Prohibition against leaving the country, community of residence or area specified by the judge;

(5) Prohibition against attending certain meetings or visiting certain places;

(6) Prohibition against communicating with certain persons, provided defence rights are not adversely affected; and

(7) Posting of an appropriate guarantee, by the accused or another person, in the form of money, securities, pledge or mortgage, putting up of property or the recognizance of one or more suitable individuals.

The judge may order one or several of these measures concurrently, as appropriate, and shall order the measures and communications necessary to ensure that they are carried out. In no case shall these measures be ordered or carried out in such a way as to distort their purpose by making it impossible to enforce them; in particular, bail shall not be required when the accused's state of impoverishment or lack of means would make the posting of bail impossible.

Precautionary measures shall also be dispensed with when the maximum prison term carried by the offence is equal to or less than three years and, because of the circumstances of the case, the judge believes that acceptance of the procedure by the accused under oath is sufficient to guarantee his presence."

164. Regulations governing the measures to be taken and communication facilities to be provided to a detained person are contained in articles 9 and 10 of the Code of Criminal Procedure, but the Code does not specify that foreigners must be allowed to communicate with a representative of the State of their nationality. It simply states that accused persons who do not understand Spanish will be provided with an interpreter, as specified in article 11. The articles in question read as follows:

"Article 9. Defence shall be an inviolable part of the proceedings.

The accused is entitled to participate in all steps of the proceedings which involve evidence and to make any requests or observations he deems appropriate, without prejudice to the exercise of disciplinary power by the corresponding authority if this should disrupt any steps of the proceedings or the proceedings as a whole. If the accused is in custody, the person responsible for him shall transmit to the judge within 24 hours any requests or observations made by the accused and shall enable him to communicate with his counsel at all times.

All authorities participating in the proceedings shall ensure that the accused is immediately informed of his rights under the Constitution of the Republic, international law and this Code."

(b) Defence counsel. Technical defence:

"Article 10. All accused persons shall have an unrenounceable right to a defence counsel, from the time they are detained or accused until their sentence has been fully served.

If the accused does not appoint a defence counsel, the Prosecutor-General shall immediately be asked to appoint one and the public defender appointed shall report for duty within 12 hours of receiving the request.

If the accused is a lawyer, he may defend himself."

(c) Interpreter:

"Article 11. An accused person who does not properly understand the Spanish language shall have the right to choose a translator or interpreter he trusts to assist him in any action necessary for his defence. When he does not avail himself of this right, the court shall appoint a translator or interpreter within the time period established in the preceding article."

165. The following are the authorities which play a key role in the aspects covered by the Convention:

(a) The Office of the Attorney-General, which is responsible for directing criminal investigations;

(b) The National Civil Police, the body in charge of investigating all offences under the supervision of the Office of the Attorney-General, as stipulated in article 193, paragraphs 3 and 4, of the Constitution, which read: "To supervise the investigation of offences, with the cooperation of the National Civil Police, in the manner prescribed by law and to bring criminal proceedings ex officio or at the request of a party";

(c) The Office of the Procurator for the Protection of Human Rights, which is responsible for the protection and enforcement of human rights in El Salvador;

(d) The Office of the Prosecutor-General of the Republic;

(e) The Ministry of Justice, which is responsible for sponsoring, enforcing and drafting legislation;

(f) The judiciary, which is responsible for the administration of justice and the enforcement of sentences.

Article 7

Measures adopted

166. Criminal legislation and legislation on criminal procedure in El Salvador provide for the principle of the extraterritoriality of Salvadoran law in respect of offences committed by Salvadorans abroad, following a refusal to extradite for reasons of nationality; El Salvador cooperates with other Governments in combating crime and supports international assistance in criminal matters, pursuant to article 9, paragraph 3, of its Penal Code, which orders the prosecution of persons accused of a criminal act:

"Article 9. Salvadoran criminal law shall also apply:

(3) In respect of offences committed abroad by Salvadorans when extradition on the ground of nationality is denied or by foreigners against the property of Salvadorans."

167. To this end, El Salvador has introduced a legal mechanism which enables it to cooperate in punishing crime and protecting the legal system, as considered appropriate under international law, by assisting in criminal proceedings against Salvadorans accused of committing torture; the extradition treaties signed by El Salvador also contain clauses stating that, if extradition on the ground of nationality is denied, the State in which enforcement is sought agrees to try its national in accordance with the international principle aut dedere aut punire.

Article 8

168. The following extradition agreements have been ratified by the Republic of El Salvador and have entered into force between the parties:

Convention on Extradition, with Italy (1871);

Convention on the Extradition of Criminals, with Belgium (1881); Extension of the Convention on the Extradition of Criminals, with Belgium (1933);

Treaty on the Extradition of Criminals, with Great Britain (1883); Addendum to the Treaty on the Extradition of Criminals, with Great Britain (1931); Addendum to the Treaty on the Extradition of Criminals, with Great Britain (1932); Addendum to the Treaty on the Extradition of Criminals, with Great Britain (1934);

Convention on Mutual Extradition of Criminals, with Switzerland (1885);

Treaty on Extradition, with the United States of America (1911);

Convention on Extradition (Central American, 1925);

Convention on Extradition (OAS multilateral, 1936);

Treaty on Extradition, with the Kingdom of Spain (1997) and

Treaty on Extradition, with the United Mexican States (1997).

169. With regard to El Salvador's commitment to include the offences referred to in article 4 as extraditable offences in extradition treaties concluded between States, it should be noted that, since El Salvador's accession to the Convention, it has signed and ratified only two treaties, i.e. the Treaty on Extradition with the Kingdom of Spain (arts. 3 and 4) and the Treaty on Extradition with the United Mexican States (arts. 2 and 4). Both texts include a general provision giving effect to this commitment, which read, respectively, as follows:

"Article 3. Extraditable offences

1. Extraditable offences for the purposes of this Treaty are offences which, under the legislation of both contracting parties, carry either a custodial penalty with a maximum duration of at least one year or a harsher penalty.

2. When extradition is sought in respect of a person sentenced to a custodial penalty by a court of the requesting State for an extraditable offence, at least six months of the sentence must remain in order for extradition to be granted.

3. In determining whether an offence is punishable under the legislation of both contracting parties, the following factors shall be irrelevant:

(a) Whether the criminal act in question is classified in the same category, or the same terminology is used to designate it, in the legislation of both contracting parties.

(b) Whether any of the elements comprising the criminal act in question differ in the legislation of each contracting party, provided that account is taken of the act as a whole as defined by the requesting State.

4. When extradition is sought for an offence involving the violation of a legal provision on tax, tariff or exchange matters or of any other provision of a fiscal nature,

extradition may not be denied on the ground that the legislation of the requested party does not include the same type of tax or duty or that fiscal, tariff and exchange provisions are not the same in the requesting party.

5. When the application for extradition contains separate offences punishable separately pursuant to the legislation of both contracting parties, even if one of them does not meet the conditions set forth in paragraphs 1 and 2 of this article, the requested party may grant extradition under those paragraphs, provided that the person involved is charged with at least one extraditable offence.

Article 4. Political offences

1. Extradition shall not be granted for offences regarded as political or politically related. The mere allegation that an offence was committed for political goals or purposes shall not in itself be sufficient to characterize an offence as political.

For the purposes of this Treaty, in no case shall the following offences be regarded as political:

(a) Attack on the life of a head of State or Government or a member of his family;

(b) Terrorist acts;

(c) War crimes and crimes against the peace and security of mankind.

2. For the purposes of paragraph 1 (b) of this article, the following shall not be regarded as political, politically related or politically motivated offences:

(a) Attacks on the life, physical integrity or liberty of persons entitled to international protection, including diplomatic agents.

(b) Any serious act of violence against an individual's life, physical integrity or liberty,

(c) Offences involving kidnapping, hostage-taking or arbitrary abduction;

(d) Offences involving the use of bombs, grenades, rockets, firearms or letters or packages containing hidden explosives, where such use would represent a danger to individuals.

(e) Any other serious act against property when such act has created a danger to individuals;

(f) The conduct of any person who has aided in the commission of the offences cited above by a group of persons acting with a common goal, even if that person has not taken part in the actual commission of the offence or offences involved;

such assistance has to have been intentional and with full awareness either of the group's objective and criminal activity in general or of its intention to commit the offence or offences involved;

(g) An attempt to commit any of the acts mentioned above or participation as co-perpetrator or accomplice of a person committing or attempting to commit said offences.

3. Extradition shall not be granted if the requested party has substantial grounds for assuming that extradition is sought in order to persecute or punish a person for reasons of race, religion, nationality or political opinion or that the person's situation might be aggravated for such reasons."

"Article 2. Extraditable offences

I. Extradition shall be admissible when it is sought in respect of wilful or culpable offences which are established in the legislation of both parties and carry custodial sentences of not less than one year, at both time of commission and time of application.

II. When extradition is sought in a case involving an executory sentence, at least six months of the sentence must remain to be served by the person being sought."

"Article 4. Dual criminality

I. In determining whether extradition should be granted, consideration shall not be given to whether the parties' criminal legislation places the criminal act in question in the same category of offence or uses the same or similar terminology to designate it, provided that the elements comprising the offence do not vary.

II. In determining whether dual criminality exists, consideration shall be given to the totality of the acts or omissions with which the person concerned is charged. In the event of discrepancy the terms of the judicial warrant being enforced shall take precedence."

170. It is clear from the foregoing that torture, which is characterized as an offence in article 297 of El Salvador's Penal Code (as an aggravated offence which may not be time-barred), constitutes an extraditable offence.

171. Since the date of ratification by El Salvador of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ministry of Foreign Affairs has received no applications for extradition concerning the offence of torture specifically, based either on the international instruments mentioned above or on the Convention. It should also be noted, in connection with article 4 of the Convention, that jurisdiction to prosecute for acts of torture has been expanded in articles 7 and 3 of El Salvador's extradition treaties with both Spain and the United Mexican States, respectively, which read as follows:

"Article 7. Grounds for denial of extradition

1. Extradition may be denied under any of the following circumstances:

(a) If, under the legislation of the requested party, the offence for which extradition is sought has been committed totally or partially within that party's territory;

(b) If the offence for which extradition is sought carries the death penalty under the legislation of the requesting party, unless the latter, in the opinion of the requested party, provides sufficient guarantees that the death penalty will not be imposed or that, if it is imposed, it will not be carried out;

(c) If the person whose extradition is sought has been acquitted or convicted in a final judgement in a third State for the same offence for which extradition is sought and, if the person has been convicted, the sentence has been fully served or is no longer enforceable;

(d) If the requested party, after taking into account the nature of the offence and the interests of the requesting party, believes that, given the personal circumstances of the person sought, such as age, health, family situation or other similar circumstances, extradition would not be compatible with considerations of a humanitarian nature;

(e) If the offence for which extradition is sought has been committed outside the territory of either of the two contracting parties and the legislation of the requested party does not give it jurisdiction to try cases involving offences committed outside its territory under similar circumstances;

(f) If the person whose extradition is sought has not been or will not be tried according to the minimum guarantees established in article 14 of the International Covenant on Civil and Political Rights.

2. If the requested party denies extradition on any of the grounds indicated in this or the preceding article, the matter shall, at the request of the requesting party, be submitted to the corresponding authorities, who shall take the judicial measures they deem appropriate. To that end, any documents, information or items relating to the offence shall be sent free of charge by the means provided for in article 2. The requesting party shall be informed of the result of its request."

172. It should be emphasized that the legislation of both the Republic of El Salvador and Spain include the principle of universality, hence both States may have jurisdiction over offences committed outside their territories. A contrario sensu, therefore, article 7, paragraph 1 (e), would not be applicable if the parties have jurisdiction over offences committed outside their territory.

"Article 3. Granting of extradition

Extradition shall be granted in the following cases:

I. When the offence has been committed within the territory subject to the jurisdiction of the requesting party.

II. When the offence has been committed outside the territory of the requesting party, provided that:

(a) The legislation of the requesting party establishes penalties for the same offence, committed in similar circumstances;

(b) The person who has committed the offence is a national of the requesting party or a foreigner and the requesting party has jurisdiction to try him under its own legislation.

III. The application for extradition shall be granted even when the offence involved relates to duties, tariffs or other types of taxes."

173. Article 3 clearly establishes the principle of universality in paragraph II (b), which states that extradition shall be granted in cases where the requesting State has jurisdiction to try cases involving offences committed by a person outside the national territory, as is the case of the Republic of El Salvador.

Article 9

174. El Salvador provides cooperation to nations which request it. This cooperation covers all types of offences, not only torture or other cruel, inhuman or degrading treatment or punishment. Such cases are governed by the contents of the Code of Criminal Procedure, adopted in April 1998, which stipulates:

"Letters rogatory to foreign courts

Article 139. Letters rogatory shall be used in dealing with foreign courts. The judge or court concerned shall transmit the letters, through the Supreme Court of Justice, to the Ministry of Foreign Affairs, which shall forward them through diplomatic channels.

Letters rogatory from abroad

Article 140. Letters rogatory from foreign courts shall be processed in the cases and forms established by international treaties or custom and through the country's legislation and the reply shall be sent through the Ministry of Foreign Affairs."

175. From the outset, El Salvador's legislation has reflected its desire to combat crime. Article 182, paragraph 3, of the Constitution currently empowers the Supreme Court of Justice

"to order letters of request or letters rogatory to be issued for the taking of evidence abroad and compliance with those from other countries, notwithstanding the provisions of existing treaties; and to grant extradition".

176. On the basis of these powers, our country cooperates with other States by requesting or providing assistance, aimed at combating all offences, including torture. The Criminal Division of the Supreme Court of Justice is responsible for carrying out this mandate. Statistical data provided by the Court indicates that, from January to November 1998, El Salvador provided assistance to meet the requests of 21 countries. It should be noted, however, that the requests did not refer to any of the offences covered by article 4 of the Convention, but to other types of offence (Statistics, Registry of the Criminal Division of the Supreme Court of Justice, 1998).

177. Various types of assistance have been provided. For example, cooperation with some Latin American countries has not been limited to carrying out certain judicial formalities (notifications, summonses, etc.), but has included seeking and providing evidence. Such assistance is made possible by agreements on mutual legal assistance with countries such as Guatemala, Honduras, Panama and Mexico, whose cooperation El Salvador has requested or which have requested cooperation from El Salvador, in the last year. There have also been frequent exchanges in this regard with the United States, given the number of Salvadoran residents there. With regard to Europe, contacts have been established with the United Kingdom in connection with a case involving kidnapping and a case of large-scale financial fraud in the country, for which various kinds of information were requested. Italy recently requested cooperation from the authorities regarding the legal situation of an Italian citizen being detained in El Salvador.

178. The Republic of El Salvador has ratified the following international instruments on judicial cooperation, which have entered into force for the parties:

Inter-American Convention on the Taking of Evidence Abroad (1980);

Memorandum of Understanding on Judicial Cooperation between the Government of the Republic of El Salvador and the Government of the Republic of Colombia (1992);

Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama (1994);

Agreement on Judicial Assistance in Criminal Matters with the Republic of Peru (1996);

Agreement on Judicial Cooperation in Criminal Matters with the Kingdom of Spain (1997);

Treaty on Cooperation concerning Mutual Legal Assistance in Criminal Matters with the United Mexican States (1997).

179. It should be noted that, since El Salvador's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no requests have been received for judicial cooperation in respect of the offences set forth in the Convention.

Article 10

Office of the Procurator for the Protection of Human Rights

180. The legislation governing the activities of the Office of the Procurator for the Protection of Human Rights (PDDH) specifically stipulates that one of the duties of the Office is to provide human rights education.[16] Within these terms of reference, PDDH has developed plans for training law-enforcement personnel with the aim of preventing human rights violations.

181. The Salvadoran Institute of Human Rights has carried out activities in which priority has been given to the subject of human rights, and particularly the protection of the rights of persons subjected to detention or imprisonment. The table below gives attendance figures for the educational activities of the Salvadoran Institute of Human Rights.

Sector	No. of activities	Attendance: men	Attendance: women	Total attendance
National Civil Police	14	955	45	1 000
Local police force of Nueva San Salvador	4	72	5	77
Prison Staff Training School	10	340	25	365
Total	28	1 367	75	1 442

182. The participants from the National Civil Police included 45 women, whose rank ranged from officer, corporal, sergeant and deputy-inspector to deputy commissioner; women have thus been joining the police, although they account for a relatively small number of the 18,000-strong National Civil Police. Of the five women working for the local police force of Nueva San Salvador, some were working in administrative posts.

183. Twenty-five women from the Prison Staff Training School attended, including some from the women's prison in Ilopango. Other women who attended have the job of searching the women visiting prisoners in the various detention centres in the country, to ensure that they do not smuggle in drugs, weapons or other banned objects to the prisoners, and of keeping a record of all the women visiting relatives or friends held in the detention centres.

184. While these activities have taken place within the framework of the Institute's work programme, PDDH has also received various requests from agencies involved in the treatment of persons who are either held in preventive detention or formally jailed. The Institute's response to the requests from the various sectors is outlined below.

185. In recent years, the Prison Staff Training School, which is part of the Directorate-General for Detention Centres of the Ministry of Justice, has been the most insistent in seeking support from PDDH on the subject of human rights. The training school is located in the La Esperanza penitentiary, in the town of Ayutuxtepeque, department of San Salvador. PDDH provided a course lasting 20 working days, with 12 hours spread over three days (an average of four hours a day). Prison warders from all over the country attended these courses. PDDH has also developed a course for governors and deputies responsible for technical matters and for security and custody in detention centres from throughout the prison system in El Salvador. The week-long course included five hours of instruction on human rights.

Table of courses provided for staff of the national prison system

Month/year	No. of warders	No. of governors, chief officers and deputies	Total
February 1997	47	22	69
March 1997	36		36
April 1997	34		34
May 1997	37		37
June 1997	45		45
August 1997	47		47
September 1997	45		45
February 1998	25		25
March 1998	27		27
Total	343	22	365

Ministry of Justice

186. Through the Directorate-General for Detention Centres and in compliance with its duty to administer the prison system, the Ministry of Justice, has acted to ensure the physical and mental well-being of inmates by making major efforts to improve their living standards. Technical intervention programmes have been carried out in the areas of psychology, social work, education, work environment, health and safety.

187. Mindful of the overcrowding in the prison system and of the social conflicts that have arisen since the end of the war, the State party found it necessary to amend internal legislation and adopt new laws based on a humanist approach for the purpose of facilitating the social

rehabilitation and return to work of those deprived of their liberty. As part of its efforts, the State has provided funds for six detention centres designed to house 3,230 inmates, thereby helping to improve their living standards. Changes have also been made to the organizational and operational structure for the hiring of skilled technical personnel with the necessary human qualities in the various areas.

188. With regard to the training of prison service staff, see annex 8, which gives data on the number of participants and the content of programmes in the last four years.

189. From 1993 to mid-1998, the School of Human Development trained security and technical staff. With the entry into force of the Prisons Act, the training of prison staff was standardized and now incorporates a selection and evaluation procedure. The Prison Staff Training School was set up in this context. It is hoped that the setting up of the School will help create a new working environment that will allow the prison culture to be improved in two crucial areas: training and a change of attitude by those who run the system.

190. As may be expected, setting up a training institute requires careful planning; in that respect, the Prison Staff Training School was conceived of as part of a process in which the first steps were to establish its raison d'être and philosophical context, the course syllabus, an assessment of the prison system and a preliminary draft of the School's regulations.

191. Constant reminders are needed of the fundamental social role of the Prison Service. To that end, the objective of the School's staff-training work is, after taking account of the 1998 Prisons Act and the desire to give the service a more human face, rehabilitation, to reduce to a minimum the harmful effects of incarceration and, consequently, reduce recidivism.

192. As regards the effectiveness of the training programmes, they began to be implemented systematically in 1998 and it will be possible to begin gauging their impact as from 1999. The training of technical staff, which is already under way, has begun to bear fruit, thanks to the technical intervention programmes in detention centres, as well as the organization of those programmes, the development of work plans, the standardization of criteria and the development of a single record card for male and female inmates of the prison system.

193. Some of the projects carried out as part of this process have benefited from the cooperation of international organizations, including: technical and financial assistance in work-related matters from the European Union; the provision of equipment and training in workshops in detention centres; support from the United Nations Development Programme (UNDP) for setting up the Prison Staff Training School; the technical cooperation project on human rights of the Office of the United Nations High Commissioner for Human Rights; coordination with universities in the country; and the Office of the Procurator for the Protection of Human Rights.

194. It should be mentioned that the Prison Staff Training School has accepted male and female technicians, security staff and guards as prison staff and has given them courses on interpersonal relations, ethics, human rights, reskilling of prisoners, penitentiary law, criminology, supervisory programmes for prisons and so on.

Judicial Service Training College

195. The drafters of the 1983 Constitution considered it necessary to provide human rights education in all public and private, civilian and military schools.[17] This general mandate was made more specific in article 187 of the Constitution, whereby the National Council of the Judiciary was given responsibility for organizing and running the Judicial Service Training College, "whose objective shall be to ensure that the training of judges and other judicial officials is improved". The College was set up on 20 February 1991. Furthermore, article 31 of the regulations of the Judicial Service Training College stipulates that international treaties and human rights are compulsory subjects in the training of judges and other judicial officials.

196. The Judicial Service Training College has fulfilled its mandate as follows:

(a) By defining a subject area entitled "Constitutional law and human rights", which is the basis for specific courses lasting from two to four weeks; between May 1997 and April 1998, eight courses were held, accounting for 1,876 teaching hours, and attended by 1,825 judges, judicial officials, co-workers, prosecutors public defence lawyers and clerks of the court. In particular, time is set aside for the study of the Convention against Torture in the module entitled "Instruments for the protection of human rights";

(b) By so designing the other subject areas that the philosophy of the various international human rights treaties and humanitarian law in force in El Salvador is treated as a cross-cutting issue. By way of example, full information on the prohibition of torture is included in the courses on prison law for judges and prosecutors and in the analysis of inmates' rights and the prohibitions that apply to the prison administration. Likewise, in the many courses on criminal procedural law given by the Judicial Service Training College,[18] the Convention against Torture is one of the topics studied in connection with the detention of the accused and the basic principles governing the conduct of officials or police officers;[19]

(c) By extending its work to the community, the Judicial Service Training College has gradually broadened its reach, making its services available to litigants, journalists, teachers, academics, police officers from the National Civil Police, lawyers of the Archdiocesan Legal Protection Office, members of the armed forces, etc.

197. It is worth highlighting two initiatives taken by the College this year. The first is the production of an operations manual for students of the National Public Security Academy, which includes clear instructions for future police officers on the prohibition of torture. The second initiative under way is the so-called IURIS-RED, a distance-learning programme based on a two elements: consultation and practice. The first is intended to answer any questions that someone working within the judicial system or civil society may have about the administration of criminal justice; and the second is intended to emphasize important topics such as the binding force of international human rights treaties in Salvadoran legislation, the rights of the defendant, instruments for the protection of human rights and domestic and international protection of human rights.

Forensic Medicine Institute

198. Likewise, the Dr. Roberto Masferrer Forensic Medicine Institute has reported that its medical staff took part in training activities on recognizing cases of torture and its physical and/or psychological after-effects in 1995 and 1996, as detailed below:

A lecture on violations of human rights and cases of torture in Bosnia, given by the North American expert forensic pathologist, Dr. Robert Kirschner;

A seminar on "Treatment of the victims of organized violence" given by the Inter-American Institute of Human Rights, Granada, Nicaragua;

A lecture on the prevention of torture, delivered by the Swedish expert Ole Vedel Rasmussen, an external medical consultant in the field of the prevention of torture.

Ministry of Education

199. Through the Ministry of Education, the State is promoting a process of educational reform of which an essential element is moral education, an element that covers in particular the study of human rights. For such reform, educational resources of all kinds, both formal and informal, are irreplaceable.

200. Among the actions taken by the Ministry of Education to promote human rights through education, the following may be mentioned:

The introduction in the curriculum of a humanist, constructive and socially committed focus on the human person;

The integration in basic subjects and school activities of information on human rights and on the rights of the child, women and men. Such information is also included in primary school textbooks of the "Cipotes Collection";

The production of teaching guides on the rights, duties and freedoms of children. The guide for the first and second stages of basic education is called "Stand up for your human rights". The one for the third cycle and the high school certificate is called "Promoting human rights";

Support in the classroom for the introduction of the national policy on women;

Supplying educational institutions with teaching aids for human rights education, including the texts of laws, conventions and other documents;

Training for nursery, primary and secondary school teachers, including an important course on "Discipline with dignity, self-esteem and strengthening of values". This training is provided at the beginning of the year, with periodic back up during the year;

In-service training for schoolteachers and officials of the Ministry of Education to bring their human rights education up to date;

The production of the Human Rights Education Manual;

A schedule of ethical and civic human values;

Weekly publication in the written media of information specifically on human rights and values.

201. The Ministry of Education is making constant efforts to satisfy people's needs in traditionally underserved or neglected sectors. School management guidelines have been produced and funds transferred to schools through "educational quality" vouchers, so that democratic practices are being introduced into the community. One of the main tasks of this Ministry has been to involve citizens effectively and efficiently in the formal education system. The highly centralized decisions of the past are now taken at the local level, in the schools themselves, which thus do a good deal of their own administration. As well as being democratic, this is a measure that promotes human rights.

202. We believe that the decisive factor in promoting human rights in schools is curriculum reform, which has seen the introduction of teaching methods that encourage positive attitudes towards dialogue, listening, calm discussion, tolerance, solidarity, a preference for reasoned argument rather than dogmatism, the use of various sources of information and, in short, all the other virtues that go towards forming a balanced and respectful personality. This kind of teaching strategy helps to create a favourable environment for the understanding and practice of human rights. The curriculum also encourages students to see that all rights have corresponding duties and that the healthy co-existence of people depends on this balance.

203. It is also important to point out that the work of the Ministry of Education on human rights is based on the provisions of the General Education Act and the Teaching Profession Act.[29]

National Public Security Academy

204. With the objective of improving the teaching in the National Public Security Academy, a policy has been put in place whereby national and international human rights organizations are approached in order to provide information and training. This initiative of the Humanities Department was inspired by the guidelines of the government department responsible for the National Public Security Academy. Thus, in a two-year period beginning in 1996, training has been given by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) on the subject of domestic violence, and there have been bilateral meetings with Radda Barnen on the rights of the child and the treatment of young offenders, as well as closer contacts with the Office of the Procurator for the Protection of Human Rights, with direct participation in the courses on negotiating skills and high-risk crisis management.

205. Also, within the framework of the agreement on "Training the Police Forces of Central America in the Human Rights of Children and Adolescents", which has been signed by the

Office of the Procurator for the Protection of Human Rights, the National Public Security Academy and the National Civil Police under the auspices of the Swedish organization Radda Barnen, the Salvadoran Institute of Human Rights developed the following courses, together with the other parties to the agreement:

A course entitled "The role of the National Civil Police in the Protection of Children and the Family", which was held over a period of eight weeks, from 23 September to 8 November 1996, and was attended by 800 reporting officers (sergeants, corporals and police officers) from the student programme on police methods. Each course lasted 5 days (40 hours) and, in the 3 hours specifically devoted to the subject of minors in trouble with the criminal law, the following provisions were dealt with: articles 2, 11, 12, 13 and 35 of the Constitution, article 40 of the Convention on the Rights of the Child and the Juvenile Offenders Act;

Three-day courses on the same subject were held in July and August 1997, this time for the benefit of 200 persons at the managerial level or higher (deputy inspectors and deputy commissioners of the National Civil Police);

Courses for the local police force of Nueva San Salvador: the mayor's office of Nueva San Salvador requested that four three-day courses should be held during June and July 1998, and these were attended by 77 local officers. It should be pointed out that they were concerned mainly with the treatment of adolescents in trouble with the criminal law, since they are responsible for the custody of these minors in this area of the country, that is, they are responsible for the Central Zone Municipal Remand Centre for Juvenile Offenders.

Article 11

206. Articles 241, 242 and 243 of the Code of Criminal Procedure establish the basic principles for the conduct of auxiliary law enforcement agencies, indicating the conditions and manner in which an individual may be questioned.

207. Generally speaking, there are two occasions on which a person may be questioned:

(a) During the investigation into the case: the following people may be questioned by officers of the National Civil Police, under the supervision of the Office of the Attorney-General:

(i) The person charged or detained (when caught in the act or in cases where there is an administrative and judicial detention order);

(ii) Witnesses to the act;

(iii) The victim or injured party.

In any case, the manner of questioning is subject to the rules on police conduct contained in the above-mentioned articles;

(b) During the public trial: the questioning is carried out by counsel and the judge, in accordance with article 348 of the Code of Criminal Procedure.

208. The following progress can be noted:

(a) Although confessions made out of court continue to be accepted, article 222 of the Code of Criminal Procedure imposes a number of requirements to ensure that the appropriate and necessary conditions are met for the statement to be valid in the trial. In these cases, the Office of the Prosecutor-General of the Republic checks whether these conditions have been met or not so that, where necessary, the statement may be declared invalid and the necessary remedies applied;

(b) Restrictions have been placed on statements by the accused by article 242 of the Code of Criminal Procedure, which stipulates that the accused may not be questioned or interrogated in any way until the services of a defence counsel have been requested and that no such interrogation may take place until the defence counsel has been appointed and has interviewed the accused. While progress in the mechanisms for appointing a defence counsel is interesting, the Office of the Prosecutor-General of the Republic provides its operational assistance in the premises of the Office of the Attorney-General, as the National Civil Police does not request assistance at police headquarters. The Office of the Prosecutor-General has no external mechanisms for checking police procedures with regard to the way in which arrests are made;

(c) As to the custody and treatment of individuals whose freedom of movement has been restricted, article 40 of the Prisons Act authorizes the Office of the Prosecutor-General to participate in the hearing of any complaint or interlocutory matter. However, this agency's role is limited as a result of a shortage of staff and an inadequate budget.

209. Guardianship or supervision is carried out in compliance with the Constitution and subsidiary laws - the Penal Code, the Code of Criminal Procedure, the Juvenile Offenders Act and the Prisons Act.

210. The procedures for the correct implementation of article 11 of the Convention are to be found in manuals, the National Civil Police Organization Act and the regulations describing how to follow the operational methods deriving from the Constitution.

211. According to article 193, paragraphs 3 and 4, of the Constitution, it is the duty of the Attorney-General of the Republic to:

"3. Conduct the investigation into the crime with the cooperation of the National Civil Police in the manner provided for by law;

4. Institute proceedings either ex officio or on the application of a party ...".

They establish the leading role and jurisdiction of the Attorney-General in respect of the institution of proceedings, as well as his managerial function vis-à-vis the National Civil Police, as embodied in article 240 of the Code of Criminal Procedure, which reads:

"Coordination of the investigation:

Officials and police officers shall perform their functions in connection with the investigation of punishable acts under the supervision of the public prosecutors and shall carry out the orders of the latter and of the courts.

The public prosecutor in charge of the investigation may at any time require the police to take action or set a deadline for the completion of its action.

Officials and police officers who for any reason whatsoever are unable to carry out an order given to them by the Attorney-General of the Republic or the judicial authority shall immediately inform whoever gave the order so that the latter may propose any changes deemed necessary.

Officials and police officers shall, in the course of their duties in connection with the investigation, be at all times under the supervision of the public prosecutors, without prejudice to the overall administrative authority to which they are subject."

212. Article 244 of the Code of Penal Procedure reads as follows:

"Formalities for police inquiries

Officials and police officers shall notify the Office of the Attorney-General of the Republic, within eight hours at the latest, of any crimes that come to their attention and shall carry out an initial investigation as a matter of urgency to collect or secure the evidence and to avoid the flight and concealment of the suspects. In all cases, they shall act under the supervision of the public prosecutors."

213. Furthermore, the Supreme Court of Justice has done its utmost to ensure that other agencies, such as the National Civil Police, the Office of the Attorney-General and the Directorate-General for Detention Centres, comply with the provisions of this article of the Convention. The involvement of the Supreme Court has led to the creation of the courts for prison supervision and the enforcement of sentences and the establishment of the Department for the Transfer of Offenders.

214. Under article 35 of the Prisons Act, issued on 13 May 1997, the courts for prison supervision and the enforcement of sentences were granted jurisdiction to monitor and ensure full compliance with the rules on the enforcement of sentences and security measures, as well as respect for the rights of every person deprived of liberty for whatever reason.

215. On 23 March 1998, 10 prison supervision courts were created, one of whose many objectives is to prevent any occurrence of torture by establishing a flexible monitoring

instrument called a judicial complaint: "Any inmate whose fundamental rights are directly infringed or who is subjected to any activity or disciplinary measure prohibited by law may file a complaint ..." (art. 45 of the Prisons Act).

216. The Department for the Transfer of Offenders, which is responsible for transporting detainees from the detention centre to the relevant court premises, began operating on 29 April 1998. At the moment, the Department is composed of three regional centres in the national territory in Santa Ana, San Salvador and San Miguel.

217. Article 245 of the Code of Criminal Procedure reads as follows:

"Penalties

Any police officials, officers or auxiliary staff who violate legal provisions or regulations, who do not carry out or who delay in carrying out action forming part of their duties or who carry it out negligently or who do not obey the instructions of the public prosecutors shall be penalized by the courts in accordance with the applicable rules of the police regulations.

Failure to comply with any of these principles shall make officials and police officers liable to the appropriate disciplinary action, without prejudice to criminal responsibility."

218. The competent authority for receiving prisoners' complaints is the court for prison supervision and the enforcement of sentences and the procedure laid down by law is as follows: any inmate whose fundamental rights are directly infringed or who has been subjected to any prison activity or disciplinary measure prohibited by law submits an oral or written complaint to the relevant court for prison supervision and the enforcement of sentences; once the court has received the complaint, a hearing is called and held in the presence of the complainant, the public prosecutor and a lawyer who is there to uphold the fundamental rights of the inmate, and the complaint is resolved at the same hearing. The hearing may take place either in the court or in the detention centre where the inmate is being held.

Interrogations carried out by the authorities of the Ministry of Defence

219. El Salvador has signed and ratified the Geneva Conventions of August 1949 and their 1977 Additional Protocols, which are law in the Republic, so that, in the event of armed conflict and the need to carry out interrogations, any such actions will be carried out according to the principles they embody.

220. With regard to interrogations in purely military judicial proceedings, the accused enjoys all the guarantees of due process of law.

Measures taken to establish a system of supervision in the National Civil Police

221. In the course of its activities, the National Civil Police, as a body constantly involved in the investigation of crime, is in direct contact with persons accused of crimes, witnesses, experts,

etc.; legal and institutional provisions have therefore been included in the relevant rules so that the activities of members of this police force can be permanently monitored, in order to eliminate and prosecute conduct such as torture which is considered undesirable in the Republic of El Salvador.

222. In this respect, reference is made to article 8 of the National Civil Police Organization Act, which provides as follows:

> "Article 8. The Office of the Inspector-General of the Police operates under the authority of the Ministry of Public Security and is responsible for supervising and monitoring the performance of the operational and management services of the force, as well as matters relating to human rights. The Inspector-General shall be appointed by the Ministry of Public Security subject to the approval of the Attorney-General of the Republic and of the Procurator for the Protection of Human Rights. The Inspector-General shall report to the Ministry of Public Security on activities carried out in accordance with the law and the Ministry shall copy the report with its recommendations to the Director-General.
>
> The Inspector-General shall provide the Procurator for the Protection of Human Rights with a regular report every six months and, exceptionally, whenever so requested by that official."

223. Article 10, paragraph 4, of the National Civil Police Organization Act provides that:

> "The Monitoring Unit shall operate under the authority of the Director-General of the National Civil Police and its task shall be to monitor every department of the police and the Disciplinary Investigation Unit whose task is to investigate serious misdemeanours committed by members of the police."

224. Article 25, paragraph 4, of the National Civil Police Organization Act provides as follows:

> "Article 25. The exercise of police duties is subject to the following code of conduct:
>
> 4. No member of the National Civil Police may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment; and may not invoke the order of a superior or special circumstances such as a state of war or the threat of war, a threat to national security, domestic political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment."

225. Article 5 of the Disciplinary Regulations of the National Civil Police provides as follows:

> "Article 5. The Disciplinary Tribunal shall be competent to try serious and very serious misdemeanours and, where necessary, impose the penalties called for by law and by the regulations."

226. Article 7, paragraph 4, of the Disciplinary Regulations of the National Civil Police provides as follows:

"Article 7. The following are considered very serious misdemeanours:

4. The abuse of one's powers and the practice of inhuman, degrading, discriminatory or humiliating treatment of colleagues or subordinates, as well as of persons in detention or custody."

Measures taken to establish a system of supervision for the Office of the Attorney-General of the Republic

227. With regard to the Office of the Attorney-General of the Republic, which is the agency with overall responsibility for the investigation of crimes and is therefore also in direct contact with persons accused of crimes, witnesses, experts, etc., the Code of Criminal Procedure provides for judicial monitoring of the activities carried out by members of this agency in the early stages of the investigation and in the pre-trial proceedings in order to eliminate and prosecute conduct such as torture, which is considered undesirable in the Republic of El Salvador. In this respect, article 55, paragraph 1, of the Code of Criminal Procedure provides:

"Justices of the Peace

Article 55. The Justices of the Peace shall have jurisdiction in:

1. The monitoring of the early stages of the investigation and the holding of the initial hearing."

228. Article 268, paragraph 1, of the Code of Criminal Procedure provides:

"Participation of the Office of the Attorney-General of the Republic

Article 268. The prosecutor may examine the case at any time and shall carry out the investigative assignments requested by the examining magistrate, without prejudice to the prosecutor's own prerogative of carrying out any investigations that might be useful in supporting the charges. The prosecutor shall always act under the authority of a judge and, if the latter expresses an intention to be present, he or she shall be officially notified; however, the investigation shall not be held up or postponed because of the absence of the judge."

Measures taken to establish a system of supervision for judicial authorities

229. The principle of making criminal proceedings open to the public is one way to allow the public to participate in and monitor the administration of justice. This is a wide-ranging monitoring mechanism that allows citizens to form a view on judicial activity, such as the interrogation of defendants, witnesses, experts, etc.; this principle is included in the rules of criminal procedure because judicial accountability is partly considered to rest on civilian

oversight, since individuals are the theoretical repository of the sovereignty of the Salvadoran State. Partial or total secrecy is found only in exceptional circumstances. In this respect, article 272, paragraph 1, of the Code of Criminal Procedure provides as follows:

"Openness of proceedings

Article 272. As a general rule, criminal proceedings shall be public, but, in a reasoned ruling, the judge may order that they should be partially or totally closed when morals, the public interest or national security so require or when to do so is provided for in a specific rule."

230. Article 327, paragraph 1, of the Code of Criminal Procedure provides as follows:

"Public hearings

Article 327. The hearing shall be held in public, but the court may rule, either ex officio or at the request of a party, that it should be held partially or totally in private where that would be required for reasons of morals, the public interest or national security or where to do so is provided for in a specific rule."

Measures taken to establish a system of supervision in the Office of the Procurator for the Protection of Human Rights

231. Part of the mandate of the Office of the Procurator for the Protection of Human Rights is specifically to check the conditions in which detainees are held, given the existence of legislation that requires auxiliary law-enforcement agencies to report to it on detainees and also on the situation in general of persons deprived of their freedom. According to the Constitution:

"Article 194, title I, subparagraph 5:

The Procurator for the Protection of Human Rights and the Prosecutor-General of the Republic shall have the following functions:

5. To monitor the situation of persons deprived of their freedom. He shall be notified of all arrests and shall ensure that the legal limits for administrative detention are observed. "

232. According to the Regulations on the Functions of the System for the Protection of Human Rights:

"Article 56 (c): The functions of the head of the Department of Verification and Preventive Observation are:

(c) To ensure the updating and effective use of the computer files on detainees."

233. According to the Rules of Procedure of the System for the Protection of Human Rights:

"Article 8 (e): 'The constitutional functions of the Procurator are:

(e) To monitor the situation of persons deprived of their freedom. He shall be notified of all arrests and shall ensure that the legal limits for administrative detention are observed.

Article 75 (b): The Department of Verification and Preventive Observation and the departmental delegates shall pay particular attention to the following situations of preventive observation with regard to human rights:

(b) The situation of persons held in detention centres and prisons.

Article 82: The inspection of prisons and detention centres shall be carried out in accordance with the relevant handbook and guidelines provided by the Office of the Deputy Procurator."

234. The performance of the activities of the prison and detention centres in the various departments is the responsibility of the departmental delegates.

235. The inhuman treatment of detainees has also been considered a violation of the right to personal integrity. In 1996, seven reports were issued on instances of this violation involving employees of various State agencies, while, in 1998, only one such case was reported.

236. The Office of the Procurator maintains a centralized register of persons detained or imprisoned throughout the country. The data in the following table are taken from the 1995, 1996 and 1997 reports on progress in human rights in El Salvador:

Detention centres	Prison population			
	1995	1996	1997	
			Men	Women
La Esperanza	2 250	n.a.	1 836	-
Santa Ana	876	n.a.	615	12
San Vicente	794	n.a.	750	-
Atiquizaya	252	n.a.	169	-
Sonsonate	666	n.a.	345	14
Quezaltepeque	640	n.a.	428	-
Chalatenango	283	n.a.	356	35
Ilobasco	81	n.a.	244	-
Sensuntepeque	296	n.a.	302	1
Cojutepeque	131	n.a.	401	-
Ilopango (for women)	316	n.a.	-	364
San Miguel	469	n.a.	353	49
Usulután	288	n.a.	277	1
Jucuapa	109	n.a.	156	-
La Unión	212	n.a.	175	-

Detention centres	Prison population			
	1995	1996	1997	
			Men	Women
San Fransisco Gotera	308	n.a.	341	-
Metapán	n.d.	n.a.	142	-
Apanteos	n.d.	n.a.	1 751	-
Berlín (for women)	n.d.	n.a.	-	26

237. With regard to the broad outlines and of the United Nations Standard Minimum Rules for the Treatment of Prisoners and the subject areas with which they deal, see annex 9, "Analytical summary of the prison system of El Salvador, in accordance with the structure of the United Nations Standard Minimum Rules for the Treatment of Prisoners".

Article 12

238. Under the new Code of Criminal Procedure, which entered into force on 20 April 1998, the pre-trial phase begins with a series of procedures that basically establish the channels whereby the information that a punishable act - in this case the offence of torture - has been committed enters the judicial system, and enable the State to exert its power to punish, by investigating the facts. The generic term "preliminary pre-trial proceedings" includes the allegation, the criminal complaint ex officio proceedings and the investigation.

239. Under the old code, the court had very broad powers to institute criminal proceedings, either following a complaint or accusation, or ex officio. This shows how much power judges had in the past and is not compatible with the idea that criminal proceedings should be "an instrument of justice allowing the accused the opportunity to prove his innocence; in a truly impartial forum, a trial may not be dominated by the judge, while, if called upon to safeguard public interests that have been put at direct risk, it may also not be dominated by the parties. It is essential to apply the principle of the separation of powers, which provides sensible guarantees and makes it possible for the three different actors - prosecutor, judge and accused - to play their parts equitably".[21]

240. This means that a judge cannot institute proceedings for a publicly actionable offence on the basis of an allegation, a criminal complaint or ex officio. If complaints are submitted to a judge, he must receive the information and send it to the Office of the Attorney-General of the Republic who will make an administrative investigation of the facts.[22] This, too is new: the formalization of the pre-trial or extrajudicial stage. It is then up to the prosecutor to make the appropriate submissions, unless it has been materially impossible to identify a suspect or attribute the offence under investigation to a particular person, in which case he will order the case to be closed.[23]

241. Under the Constitution (art. 193, paras. 3 and 4), the institution of public criminal proceedings is the responsibility of the Office of the Attorney-General of the Republic. With the National Civil Police directing the investigation, any inquiry into an offence - including acts of torture - begins when the crime is reported or an informal deposition is taken. This opens the initial inquiries in which the relevant information is gathered along with any evidence that might

lead the prosecutor to take action, which he does by preparing a submission that moves the case into the judicial arena, where it is the judge who ensures respect for constitutional guarantees and the prosecutor who provides the evidence.

242. This phase is timed to avoid both delay and precipitate action. Delays in starting an investigation may give the impression of vacillation and impunity and the feeling that criminal law cannot touch the guilty party, contrary to what society expects. A lack of structure in an investigation may result in arbitrary violations of the defendant's fundamental rights.

243. El Salvador amended its Constitution on 10 June 1996 so as to broaden the scope of the constitutional procedure of habeas corpus.[24] According to article 11, paragraph 2, which contains the amendment:

> "A person shall have the right to habeas corpus when any individual or authority unlawfully or arbitrarily deprives him of his freedom. Habeas corpus shall also apply if any authority violates the dignity or physical, mental or moral integrity of detained persons".

The last part of the above extract provides for protective habeas corpus, which is designed to prevent torture or ill-treatment of detainees. It may also be used to prevent the arbitrary transfer of detainees.

244. Certain references are made to this type of habeas corpus in articles 40 and 57 of the Constitutional Procedures Act.

245. Under Salvadoran law, habeas corpus has always been seen as the main guarantee of individual rights,[25] and it has a long constitutional tradition, although this is largely only historical and theoretical. Nevertheless, two judgements found in domestic case law are worth commenting on, since they show that protective habeas corpus does apply in El Salvador.

(a) The first case is that of Alfonso Hércules Morán v. Second Criminal Court of San Salvador, 29 August 1995. The Constitutional Division ruled that the inadmissibility of evidence the Drugs Squad obtained by torture also covered evidence from other suspects.

(b) The second case is that of Zulma del Rosario Hernández Avalos v. Second Criminal Court of San Miguel, 15 July 1996, in which the Division observes that habeas corpus may be invoked after conviction, as what is known as "protective" habeas corpus.

246. In cases within the jurisdiction of the Salvadoran armed forces, if the army learns of incidents of torture, the military court places the accused member of the military under civilian jurisdiction, for trial.

Article 13

247. An allegation, which is an oral or written statement made by any individual bringing information to the authorities' notice about any publicly actionable offence, may also be made in cases of torture.

248. The preliminary stages of ordinary criminal procedure applicable in cases of torture are the actions giving rise to the investigation - specifically an allegation or criminal complaint made to the National Civil Police, the Office of the Attorney-General of the Republic or a justice of the peace - and to the initial police inquiries. Ordinary criminal proceedings may be instituted on the basis of:

(a) An allegation;

(b) Information about a punishable offence, provided by any credible source to the Office of the Attorney-General of the Republic;

(c) Action by the National Civil Police under article 239 of the Code of Criminal Procedure;

(d) A voluntary statement made by the person accused of an offence, under article 236 of the Code of Criminal Procedure.

249. Under article 229 of the Code of Criminal Procedure, an allegation is an oral or written statement made by any individual bringing information to the authorities' notice about any publicly actionable offence, including cases of torture:

"Allegation

Article 229. Any person witnessing the commission of a publicly actionable offence is obliged to report it immediately to the Office of the Attorney-General of the Republic, the police or the local justice of the peace. If the information comes from news or reports, there shall be no obligation to make an allegation.

If the offence is one that falls within the jurisdiction of a particular instance, no action may be taken without its involvement, apart from urgent inquiries."

250. All persons have the obligation to report publicly actionable offences such as incidents of torture. Failure to do so on the part of ordinary members of the public does not entail any particular consequences, but, under article 232 of the Code of Criminal Procedure, public officials are obliged to report any offence they know to have been committed by other officials; the same applies to doctors, pharmacists, nurses and other officials who learn of incidents of this kind in the course of their work, as well as to those who represent agencies or persons responsible for a criminal offence.

"Obligation to report - exceptions

Article 232. Publicly actionable offences must be reported by:

(1) Public officials who learn of such offences in the exercise of their functions. They shall also report government offences committed by other officials or their subordinates; failure to do so without undue delay shall entail criminal responsibility;

(2) Medical doctors, pharmacists, nurses and other health professionals, unless the information is protected by professional confidentiality; and

(3) Persons who, by legal provision or government or judicial order, are responsible for the handling, administration, care or control of the property or interests of an agency, body or person, where the offence prejudices that party or the assets or property placed under his charge or control, and provided that the offence comes to light in the course of the exercise of his functions and its effect on the property is not merely minor in nature.

In these cases, there is no obligation to report if the individual himself, his spouse, parents, children, brothers or sisters or his life companion or partner, thus runs a reasonable risk of criminal prosecution."

251. Failure to report an offence of this type gives rise to criminal responsibility for the offence of "Failure to report", as defined in article 312 of the Penal Code.

252. Offences such as torture may be reported to the National Civil Police, the Office of the Attorney-General of the Republic or a justice of the peace. The Code of Penal Procedure states:

"Duties of investigating police officers

Article 239. The police, on its own initiative or on the basis of an allegation or on the orders of the prosecutor, shall investigate publicly actionable offences, prevent offences already committed leading to further consequences, identify and arrest the perpetrators and others involved and collect evidence and other information giving grounds for bringing or dismissing charges."

253. Under article 238, paragraph 1, of the Code of Criminal Procedure, if an offence is reported to the Office of the Attorney-General of the Republic, that Office must ensure that the offence does not lead to further consequences:

"Preliminary investigation

Article 238. As soon as a punishable act is brought to the attention of the Office of the Attorney-General of the Republic, either by allegation or by other credible reports, it shall ensure as far as possible that no further consequences occur and shall initiate an investigation, save in exceptional cases provided for in this Code or by law."

254. Under article 237 of the Code of Criminal Procedure, if the allegation is made to a justice of the peace, he must immediately notify the Office of the Attorney-General of the Republic.

255. As regards protecting and assisting the victims and witnesses in cases of torture, the National Civil Police has a duty under article 239 of the Code of Criminal Procedure to ensure during initial inquiries that the offences do not lead to further consequences by protecting and assisting the victims and witnesses of crimes of torture or any other criminal act. The National

Civil Police also has the power and the obligation, under article 241, paragraphs 1 and 11, of the Code of Criminal Procedure, to receive allegations, assist victims and protect witnesses during initial inquiries, examination and public hearings:

"Powers and duties

Article 241. Police officers and agents shall have the following powers and duties:

I. To receive allegations;

XI. To assist victims and protect witnesses."

256. It should be made clear that neither the preliminary inquiries[26] nor protective habeas corpus[27] are limited to the offence of torture,[28] but also apply to any other punishable act that violates or endangers important legal rights. As regards witnesses, domestic legislation provides for the protection of witnesses and victims generally, and this is not applicable solely to the offence of torture.[29]

257. The Office of the Prosecutor-General provides legal assistance in actions taken on complaints and interlocutory matters in order to punish those involved in violations through the courts, if necessary informing the Office of the Attorney-General that a criminal offence has been committed.

258. The Salvadoran armed forces have a Human Rights Department specifically to safeguard the human rights of their members, which is responsible for taking the steps necessary to protect those involved in any allegation of human rights violations, whether within the armed forces or brought by private individuals against members of the armed forces or vice versa.

259. The Office of the Procurator for the Protection of Human Rights is an agency to which individuals can report human rights violations, which are then assessed and investigated; if the facts described in the allegations are borne out, recommendations are addressed to the agencies responsible for the offences. This mandate is supported by the Act on the Office of the Procurator for the Protection of Human Rights, article 11, paragraphs 1 and 2, of which provide that the Office of the Procurator has a duty to protect human rights and investigate allegations received.

260. It is important to note that the Office of the Procurator for the Protection of Human Rights has the legal power to initiate investigations ex officio in cases which are presumed to involve human rights violations; this permits violations of personal integrity (torture, ill-treatment, etc.) to be investigated promptly and impartially.[30]

261. According to articles 24 and 25 of the Act on the Office of the Procurator for the Protection of Human Rights:

"Article 24. Anyone may submit allegations concerning suspected human rights violations.

Allegations shall be submitted to the secretariat of the Office of the Procurator or to departmental or local delegation bureaux. They may also be handed to officials delegated by the Procurator or to other staff appointed for that purpose.

Article 25. An allegation may be submitted in written or oral form or by any other means of communication and shall contain the following minimum required information in order to be admissible:

(1) Name and particulars of the complainant;

(2) Summary of the facts, including, as far as possible, the form, date and place of the alleged violation;

(3) Names, where possible, of the victim, of the suspected perpetrators or participants in the offence and of any witness or other persons who may be able to provide information on the circumstances in which it was committed;

(4) Any other information or evidence that might have a bearing on the alleged offence.

The Office of the Government Procurator shall provide all the facilities necessary to enable allegations to meet the requirements set forth in this article."

262. The Office of the Procurator for the Protection of Human Rights also has a duty to provide assistance to the victims of human rights violations; there is a protection programme for witnesses, families and victims which is coordinated with foreign organizations and Governments.

Article 14

263. The Constitution makes frequent reference to the victim and the victim's rights to redress and compensation. For example, compensation for moral damage is provided for by law.[31] Delaying the course of justice is a ground for compensation.[32] Violation of the privacy of the home is also a ground for claiming compensation for loss or injury caused.[33] Lastly, according to article 245 of the Constitution: "Public officials and employees shall be responsible personally, and the State subsidiarily, for material or moral damage caused as a result of the violation of the rights provided for in this Constitution". Similarly, article 9, paragraph 5, of the International Covenant on Civil and Political Rights and article 10 of the American Convention on Human Rights - two international human rights instruments that are in force in El Salvador - provide for the victim's right to redress and compensation.

264. As can be seen, the above-mentioned provisions do not refer specifically to the victim of an act of torture and it is therefore necessary to look for more specific provisions in El Salvador's criminal law, since, as already mentioned, torture is an offence in El Salvador[34] and, as such, entails civil liability in addition to the penalty. According to article 116 of the Penal Code: "Anyone criminally responsible for an offence or misdemeanour shall also be held liable under civil law if the offence gives rise to loss or injury of a moral or material nature".

"Anyone criminally responsible for an offence or misdemeanour shall also be held liable under civil law if the offence gives rise to loss or injury of a moral or material nature".

265. It is the damage occasioned by an offence that entails civil liability, since compensatory action is governed by the provisions of article 115 of the Penal Code, which states:

"The civil consequences of an offence, which shall be stated in the sentence, include:

(1) Restitution of property acquired as a result of the commission of the punishable act or, failing that, payment to the same value;

(2) Repair of damage caused;

(3) Compensation to the victim or the victim's family for injuries caused as a result of material or moral damage; and

(4) Court costs.

Wherever possible, restitution shall allow for depreciation or damage, as stipulated by the court. This shall apply whether the item is in the possession of a third party who has acquired it by legal means, without prejudice to his right of recourse against the party in question and, where relevant, the right to civil compensation from the perpetrator of the crime or misdemeanour.

In setting compensation, the judge or court shall assess the extent of the damage having regard to the value of the object and the effect on the injured party.

Compensation shall cover not only damage caused to the injured party, but also damage affecting members of his family or a third party. The amount shall be set taking into account the extent of the damage and the needs of the victim, according to age, status and ability to work, as well as the benefits gained by committing the offence."

266. It should be noted that the above article does not consider the victim's rehabilitation, as a basic part of fair and appropriate compensation, to be a civil consequence of an offence. Another factor to be taken into account is the legal mechanism used to give actual effect to the civil action.

267. The main guiding principle in El Salvador's criminal law process is that criminal and civil actions are considered indivisible or must be joindered, but this appropriation of the victim's interests and wishes is offset by the requirement that both actions should be dealt with in a single set of proceedings, for which the State is responsible through the applicant body.[35] Generally speaking, the Department of Public Prosecutions is the body responsible for instituting civil proceedings, through the Office of the Attorney-General of the Republic, which institutes civil proceedings in connection with all publicly actionable offences.[36]

268. According to article 52 (ch) of the regulations to implement the Act on the Office of the Procurator for the Protection of Human Rights:

> "After having gathered sufficient information and established that a human rights violation has occurred, the Procurator shall order a report to be prepared on the facts and conclusions, and shall, in addition:
>
> (ch) Recommend compensation for the victim or, in the event that the victim has died, the victim's family."

269. In cases where a public official has been shown to be responsible for violations of the right to personal integrity, the Office of the Procurator for the Protection of Human Rights is guided in its decisions by the principle of compensation and reparation. The relevant article of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was taken into account in the legal provision embodying this principle in the Act on the Office of the Procurator for the Protection of Human Rights and in the corresponding regulations.

270. In none of its decisions has the Office referred to the State's subsidiary responsibility to make reparation for violations of the right to personal integrity and no information is available on whether that concept is used in other areas of public life.

271. Despite all the progress that has been made, no legislation has yet been prepared on the rehabilitation of crime victims in general or victims of torture or other cruel, inhuman or degrading treatment or punishment in particular. In broad terms, there are a number of programmes providing protection for the victims of domestic violence, sexual abuse or child abuse, but these are individual programmes on behalf of specific groups in very special circumstances and there is no national policy on treating the victims of crime.

Article 15

272. Article 11 of the Constitution of El Salvador guarantees the right to trial and outlines the rules of due process. One of the basic rules of due process is to obtain evidence by legal means; the principle is regulated in articles 15, 162 and 176 of the Code of Criminal Procedure; article 15, paragraphs 2 and 3, states:

> "No evidence obtained from information extracted using an unlawful procedure or method shall be deemed valid.
>
> Any kind of torture, ill-treatment, coercion, threats, deceit or any other method affecting or diminishing a person's will or violating his fundamental rights shall be prohibited."

273. These articles provide for judicial monitoring of the obtaining of evidence for use in trials. In addition, article 243, paragraph 3, of the Code of Criminal Procedure prohibits any kind of violation of the physical and moral integrity of persons during police procedures. Any administrative or judicial procedure that fails to observe the above-mentioned standards is deemed null and void.[37]

274. The National Civil Police disciplinary regulations punish all procedural irregularities, including torture, which is mentioned specifically in book III (Offences), chapter I (Extremely Serious Offences), article 7, paragraph 4: "... anyone guilty of abuse of power or of inhuman or degrading treatment, discrimination or ill-treatment against his peers or subordinates or on individuals in his custody shall be punished accordingly".

275. The Office of the Public Defender in the Office of the Prosecutor-General has a duty to provide legal assistance to anyone requesting its services; the public officials conducting the defence must ensure full compliance with due process.

276. Preliminary studies shall be made of the legality of evidence and police methods as part of the technical defence. In the event of a violation of the Convention, the public defender is obliged to apply the relevant exceptions and annulments.

277. The Office of Public Defender is making efforts to train public defenders in constitutional guarantees and human rights through various agreements, including with the Judicial Service Training College.

278. The Office of the Prosecutor-General helps advise (alleged) victims on their rights, including the right to make an allegation to the Office of the Procurator for the Protection of Human Rights and the Office of the Attorney-General of the Republic.

279. Purely military judicial proceedings comply with due process by insisting that evidence must be obtained and introduced in the proceedings in a lawful manner if it is to have evidentiary value for either the prosecution or the defence.

280. Inquiries carried out by the Office of the Procurator for the Protection of Human Rights have produced no documents that persons detained by the National Civil Police have been compelled to sign after torture.

Article 16

281. According to article 27, paragraph 2, of the Constitution:

> "Imprisonment for debt, life imprisonment, degrading punishments, banning and all forms of torture are prohibited."

282. El Salvador's legal system punishes acts such as cruel treatment, which are defined as arbitrary acts: "Any official or public employee or person responsible for a public service who, in the course of his duties, carries out any unlawful or arbitrary act, violation or offence against persons or damages property, makes use of coercion that is unlawful or not essential to the performance of those duties or services or permits a third person to do so shall be liable to two to four years' imprisonment and disqualified from holding that office for the same period".[38]

283. Article 5 of the Prisons Act gives effect to these provisions by referring to the principle of humanity and equality of penalties: "The use of torture, ill-treatment or harassment in the execution of sentences is strictly prohibited". For the strict observance of this rule, the office of Prisons Inspector has been created; he will ensure full compliance with prison regulations.[39]

284. An important new agency has been created in El Salvador to ensure legality in the execution of non-custodial sentences (house arrest, weekend arrest, community service, etc.) and of alternatives for prison sentences (probation, suspended prison sentence, etc.). The agency is the Department of Probation and Supervised Release; it deals with any persons serving sentences of this kind or on probation, ensuring compliance with the stated conditions and the rehabilitation of the persons concerned.[40]

285. Article 8 of the Prisons Act establishes the minimum impact principle: "Disciplinary measures shall not involve greater restrictions than those needed to ensure internal calm and security in the centre. They shall not be used if a private warning is sufficient". The Act also states that disciplinary measures will be imposed in such a way that they do not affect the health or dignity of detainees. Corporal punishment, such as being confined in a dark cell or any other cruel, inhuman or degrading treatment, is prohibited (art. 128).

286. Article 9 of the Prisons Act establishes detainees' rights, including the right to be treated with dignity in any situation or activity, which includes not being subjected to degrading treatment.

287. In 1996, the Office of the Procurator for the Protection of Human Rights issued 11 judgements relating to cruel, inhuman or degrading treatment or punishment and the inhuman treatment of prisoners; in 1997, it issued only one judgement; and, in 1998, one judgement relating to such violations has been issued. It systematically monitors the situation of persons in detention.

288. In some of the cases dealt with by the Office of the Procurator, isolated instances of practices such as beatings by warders or solitary confinement were noted, but it was clear that prison authorities are determined to eliminate such practices gradually.

289. In conclusion, the Government of El Salvador can inform the Committee that substantial progress has been made towards the abolition of all forms of torture and that it has therefore contributed to the implementation of the Convention. The Government is aware that further steps are still necessary, not only in terms of legislation, but also administratively in order to put an end once and for all to torture.

290. In submitting this report, the State of El Salvador repeats its wish and commitment to meet its human rights obligations in full as a member of the international community represented in the United Nations.

Notes

[1] See article 193 of the Constitution.

[2] See article 194 (II) of the Constitution.

[3] See article 194 (I) of the Constitution.

[4] Article 2, para. 3 of the Constitution.

[5] Article 17, para. 2, of the Constitution.

[6] "The Office of the Attorney-General of the Republic shall bring the civil action in the relevant application ..." (art. 43, para. 2, of the Code of Criminal Procedure).

[7] Diario Oficial No. 128, vol. 332, 10 July 1996.

[8] See article 74 of the Constitutional Procedures Act.

[9] See article 87 of the Code of Criminal Procedure on the rights of the accused, article 221 on confessions as evidence and article 243 on basic principles of the detention of the accused.

[10] See the principle of the legality of evidence in article 17 of the Code of Criminal Procedure.

[11] See article 10 of the Prisons Act on prisoners' rights.

[12] See article 128, para. 2, of the Prisons Act, which prohibits physical disciplinary measures such as confinement in a dark cell and any others of a cruel, inhuman or degrading nature.

[13] Article 194 of the Constitution.

[14] See annex 4 for the reports of the Inspector-General of the National Civil Police to the Office of the Procurator for the Protection of Human Rights of June and December 1997 and June 1998; the public opinion polls of September 1997 and March and October 1998 on police activity; and the 1997 annual assessment of the knowledge of members of the National Civil Police of human rights issues.

[15] See articles 32 to 38 and article 65 to 71 of the Penal Code.

[16] Article 105, para. 13, of the Constitution and article 2 of the Act on the Office of the Procurator for the Protection of Human Rights.

[17] Article 60 of the Constitution.

[18] Ninety-eight such courses were given between May 1997 and April 1998.

[19] See article 243 of the Code of Criminal Procedure.

[20] See articles 2, 84 and 90 of the General Education Act on human rights education and information activities and on the observance of the corresponding rights, as well as articles 55 and 56 of the Teaching Profession Act on the misdemeanours of committing disrespectful acts and using any form of physical ill-treatment on pupils.

[21] Alfredo Vélez Mariconde. Derecho Procesal Penal, vol. 1, 3rd ed., p. 389.

[22] Article 237 of the Code of Criminal Procedure.

[23] Article 246 of the Code of Criminal Procedure.

[24] Diario Oficial No. 128, vol. 332, 10 July 1996.

[25] Diario Oficial: "No authority, court or jurisdiction whatsoever is privileged in this regard; in all cases the act of showing the person shall be the foremost guarantee of the individual, whatever his nationality or place of residence". Article 74 of the Constitutional Procedures Act.

[26] Articles 229 to 246 of the Code of Criminal Procedure.

[27] Article 11, para. 2, of the Constitution.

[28] Article 297 of the Penal Code.

[29] Article 12 of the Code of Criminal Procedure gives the definition of "victim"; article 13 sets forth the victim's rights.

[30] Article 194, para. 2, of the Constitution.

[31] Article 2, para. 3, of the Constitution.

[32] Article 17, para. 2, of the Constitution.

[33] Article 20, para. 2, of the Constitution.

[34] Article 297 of the Penal Code.

[35] According to article 43, para. 2, of the Code of Criminal Procedure, "The Office of the Attorney-General of the Republic shall bring the civil action in the relevant application ...".

[36] The expression "public criminal action" covers not only publicly actionable offences, but also privately actionable offences (art. 19 of the Code of Criminal Procedure).

[37] Article 224, para. 6, of the Code of Criminal Procedure.

[38] Article 320 of the Penal Code.

[39] Articles 6, 35, 37 and 45 of the Prisons Act.

[40] Established under decree No. 259 of 23 March 1998.

List of annexes*

1. Seven cases of protective habeas corpus heard by the Constitutional Division of the Supreme Court in 1998.

2. Act on the Office of the Procurator for the Protection of Human Rights.

3. Regulations to give effect to the Act on the Office of the Procurator for the Protection of Human Rights.

4. Description of a human rights lesson plan.

5. Human Rights and the National Civil Police: Report of the Inspector-General of the National Civil Police to the Procurator for the Protection of Human Rights.

6. Letters and documents relating to an application for refugee status.

7. Report of the Government of El Salvador requested by the Commission on Human Rights Special Rapporteur on the question of torture.

8. Rules of the Prison Staff Training School, 28 September 1998, Ministry of Justice, Directorate-General for Detention Centres.

9. Summary of the analytical study of the prison system in El Salvador, in accordance with the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

10. Constitution of the Republic of El Salvador.

11. Penal Code.

12. Code of Criminal Procedure.

13. National Civil Police Organization Act, Disciplinary Rules of the National Civil Police, Police Career Development Act, National Public Security Academy Organization Act, Rules of the Office of the Inspector-General of the National Civil Police.

---

* The annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights.

14. Juvenile Offenders Act.

15. Juvenile Offenders Supervision and Control of Enforcement of Sentences Act.

16. Aliens Act, Migration Act.

17. Constitutional Procedures Act.

18. Prisons Act, Basic Principles for the Treatment of Prisoners, Standard Minimum Rules for the Treatment of Prisoners.